

No. 16-309

Title:	Divna Maslenjak, Petitioner v. United States
Docketed:	September 9, 2016
Linked with 16A125	
Lower Ct:	United States Court of Appeals for the Sixth Circuit
Case Nos.:	(14-3864)
Decision Date:	April 7, 2016
Rehearing Denied:	May 27, 2016

Questions Presented

~~Date~~~	~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~
Aug 2 2016	Application (16A125) to extend the time to file a petition for a writ of certiorari from August 25, 2016 to September 26, 2016, submitted to Justice Kagan.
Aug 3 2016	Application (16A125) granted by Justice Kagan extending the time to file until September 26, 2016.
Sep 8 2016	Petition for a writ of certiorari filed. (Response due October 11, 2016)
Oct 11 2016	Order extending time to file response to petition to and including November 10, 2016.
Oct 28 2016	Order further extending time to file response to petition to and including November 23, 2016.
Nov 23 2016	Brief of respondent United States in opposition filed.
Dec 2 2016	Reply of petitioner Divna Maslenjak filed.
Dec 7 2016	DISTRIBUTED for Conference of January 6, 2017.
Jan 9 2017	DISTRIBUTED for Conference of January 13, 2017.
Jan 13 2017	Petition GRANTED.
Feb 9 2017	Consent to the filing of amicus curiae briefs in support of either party, or of neither party, from counsel for the petitioner.
Feb 17 2017	SET FOR ARGUMENT ON Wednesday, April 26, 2017
Feb 22 2017	Record requested from the U.S.C.A. 6th Circuit.
Feb 23 2017	Record received from the U.S.C.A. 6th Circuit. The record is electronic and available on PACER.
Feb 27 2017	Joint appendix filed. (Statement of costs filed.)
Feb 27 2017	Brief of petitioner Divna Maslenjak filed.
Mar 6 2017	Brief amici curiae of Immigrant Defense Project, et al. filed.
Mar 6 2017	Brief amici curiae of Asian Americans Advancing Justice (AAJC), et al. filed.
Mar 22 2017	CIRCULATED.
Mar 29 2017	Brief of respondent United States filed. (Distributed)
Apr 12 2017	Reply of petitioner Divna Maslenjak filed. (Distributed)
Apr 26 2017	Argued. For petitioner: Christopher Landau, Washington, D. C. For respondent: Robert A. Parker, Assistant to the Solicitor General, Department of Justice, Washington, D. C.
Jun 22 2017	Judgment VACATED and case REMANDED. Kagan, J., delivered the opinion of the Court, in which Roberts, C. J., and Kennedy, Ginsburg, Breyer, and Sotomayor, JJ.,

joined. Gorsuch, J., filed an opinion concurring in part and concurring in the judgment, in which Thomas, J., joined. Alito, J., filed an opinion concurring in the judgment.

Jul 24 2017 JUDGMENT ISSUED.

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RECORD AND BRIEFS

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No.

IN THE
Supreme Court of the United States

DIVNA MASLENJAK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Sixth Circuit erred by holding, in direct conflict with the First, Fourth, Seventh, and Ninth Circuits, that a naturalized American citizen can be stripped of her citizenship in a criminal proceeding based on an immaterial false statement.

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INTRODUCTION

As this Court has long recognized, "American citizenship is a precious right," and thus "naturalization decrees are not lightly to be set aside." *Costello v. United States*, 365 U.S. 265, 269 (1961) (internal quotation omitted). A naturalized citizen is as much a citizen as any other, and indeed naturalized Americans have enriched all areas of our national life, including business, government, law, science, sports, and the arts. The threat of denaturalization has never hung over these citizens, and their families, like a sword of Damocles.

Until now. In this case, the Sixth Circuit held that petitioner, a naturalized American originally from Bosnia, can be stripped of her citizenship in a criminal proceeding based on an *immaterial* false statement in an immigration proceeding. That holding is squarely inconsistent with decisions of the First, Fourth, Seventh, and Ninth Circuits. *See, e.g.*, *United States v. Munyenyezi*, 781 F.3d 532, 536 (1st Cir. 2015); *United States v. Latchin*, 554 F.3d 709, 712-15 (7th Cir. 2009); *United States v. Alferahin*, 433 F.3d 1148, 1154-56 (9th Cir. 2006); *United States v. Aladekoba*, 61 F. App'x 27, 28 (4th Cir. 2003) (*per curiam*). The resulting inconsistency in the application of the Nation's criminal and immigration laws is intolerable: a naturalized American can now be stripped of her citizenship based on an immaterial false statement if prosecuted in Cleveland, but not in Boston, Richmond, Chicago, or San Francisco. And, adding to the confusion, the United States itself has flip-flopped on this issue not only in different cases, but also at different stages of *this very case*.

In addition, the decision below is wrong. According to the Sixth Circuit, Congress could and would have included an express materiality requirement in the criminal naturalization fraud provision, 18 U.S.C. § 1425(a), if it had wanted one. But that provision applies only where an applicant "knowingly procures" naturalization "contrary to law," *id.*, and, as a matter of law and logic, an applicant cannot knowingly "procure" American citizenship illegally based on an immaterial false statement. In addition, the "contrary to law" requirement depends on an underlying predicate violation of law, and a predicate crime alleged here, 18 U.S.C. § 1015(a)—which proscribes false statements under oath relating to naturalization—also requires a material false statement.

The district court, however, instructed the jury that it could convict petitioner under § 1425(a), based on a predicate violation of § 1015(a), "[e]ven if you find that a false statement *did not influence* the decision to approve the defendant's naturalization." App. 86a (emphasis added); *see also id.* ("A false statement contained in an immigration or naturalization document *does not have to be material* in order for the defendant to have violated the law in this case.") (emphasis added). That approach turns the statutory scheme upside down: it is fanciful to think that Congress intended for naturalized Americans to lose their citizenship in *criminal* proceedings based solely on an immaterial false statement, especially because (as this Court has recognized) they cannot lose their citizenship in *civil* proceedings based solely on such a statement. *See Kungys v. United States*, 485 U.S. 759, 767 (1988).

And the decision below has sweeping implications for naturalized Americans. Over the past decade alone, more than 6.6 million persons have become naturalized citizens. Every one of these persons, as well as the millions of additional citizens naturalized over previous decades, is now subject to a possible loss of citizenship—and potential deportation—based on an *immaterial* false statement.

Because the Sixth Circuit erred, and created an acknowledged circuit conflict, by holding that a naturalized American can be stripped of her citizenship based solely on an immaterial false statement in an immigration proceeding, this Court should grant review.

OPINIONS BELOW

The Sixth Circuit's opinion is reported at 821 F.3d 675, and is reprinted in the Appendix ("App.") at 1-39a. The district court's colloquy with counsel on the jury instructions is unreported, and relevant excerpts are set forth at App. 75-82a. The district court's jury instructions are unreported, and relevant excerpts are set forth at App. 83-89a. The district court's unreported denaturalization order is set forth at App. 95-96a.

JURISDICTION

The Sixth Circuit entered judgment on April 7, 2016, App. 1a, and denied a timely petition for rehearing *en banc* on May 27, 2016, App. 40a. On August 3, 2016, Justice Kagan extended the time within which to file a petition for a writ of certiorari until and including September 26, 2016. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PERTINENT STATUTORY PROVISIONS

8 U.S.C. § 1451(a) provides in relevant part:

It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any district court of the United States in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation ....

8 U.S.C. § 1451(e) provides in relevant part:

> When a person shall be convicted under section 1425 of Title 18 of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled.

18 U.S.C. § 1425 provides in relevant part:

> Whoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person ... Shall be fined under this title or imprisoned not more than [10 to 25 years], ... or both.

18 U.S.C. § 1015 provides in relevant part:

> Whoever knowingly makes any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship, or registry of aliens ... Shall be fined under this title or imprisoned not more than five years, or both.

STATEMENT OF THE CASE

A. Factual Background

Petitioner Divna Maslenjak, an ethnic Serb, was born and raised in a predominantly Serb village in modern-day Bosnia. App. 3a. After the collapse of the former Yugoslavia in the early 1990s, clashes broke out between Bosnia's majority Muslim population and its minority Serbs, and members of each group reported persecution by the other. *Id.*

In April 1998, Maslenjak, along with her husband and their two children, met in Belgrade, Yugoslavia (now Serbia), with an American immigration official designated to assist refugees from Bosnia's ethnic strife. *Id.* As that official testified below, the refugees she interviewed in that position "were pretty much always ethnic Serbs that had been living in Bosnia and they were ... basically forced out of Bosnia, from ... their place they lived because of ethnic cleansing." App. 51a.

And that was true for Maslenjak: as the immigration official testified below, the basis for Maslenjak's claim of refugee status for her family was that "because they were ethnic Serbs, they had been forced to flee their home—the place they lived

in Bosnia, and that they were not able to go back because they feared, basically, for their life, which was plausible." App. 56a; *see also* App. 58a (Maslenjak's refugee application based on "fear that [her family] would be mistreated on account of their ethnicity if they returned back to their home"); App. 64a (Trial Exhibit 26) (stating that Maslenjak and her family "are registered refugees in [Yugoslavia]," who "see no prospects for local integration on account of their refugee status," and "fear maltreatment on account of their ethnicity if they return to their home village"). In addition, the immigration official testified that Maslenjak stated that, after a temporary stay in Yugoslavia, she and her children "had gone back to Bosnia, but a different part that was Serb held; but the husband did not return, because he was afraid that he would be forced to serve in the [Bosnian Serb] military if he went back to that part of Bosnia." App. 56-57a.

Maslenjak and her family were granted refugee status in 1999 and immigrated to the United States in 2000. App. 4a. They settled near Akron, Ohio, where two of Maslenjak's sisters, who were also refugees, were living.

In December 2006, Maslenjak applied for naturalization. App. 65-74a. As part of the application process, she was asked numerous questions, including whether she had "ever given false or misleading information to any U.S. government official while applying for any immigration benefit." App. 72a (Question 23). A separate question asked whether she had ever "lied to any U.S. government official to gain entry or admission into the United States." *Id.* (Question 24).

Maslenjak answered both questions in the negative. *See id.* She obtained United States citizenship on August 3, 2007. App. 5a.

Shortly before Maslenjak applied for citizenship, her husband was arrested on charges of making a false statement on government documentation. App. 4-5a. Specifically, the Government charged him with failing to report on his immigration application that he had served in the the Bosnian Serb military during the Bosnian civil war. *Id.* He was convicted in 2007 and, because his conviction subjected him to removal, taken into custody by U.S. Immigration and Customs Enforcement. App. 5a.

In an effort to avoid her husband's removal, Maslenjak testified at her husband's asylum hearing in April 2009. *Id.* In that testimony, Maslenjak admitted that her husband had served in the Bosnian Serb military during the Bosnian civil war, that the family had lived together in Bosnia (although not in their home village) from 1992 to 1997, and that she had misrepresented these facts during her 1998 interview for refugee status. *Id.*

B. Proceedings Below

In March 2013, a grand jury indicted Maslenjak for violating 18 U.S.C. § 1425(a), which makes it a crime to "knowingly procure[]" naturalization "contrary to law." *See* App. 41-42a. As relevant here, the indictment charged Maslenjak with making "material false statements" in response to Questions 23 and 24 of her 2006 naturalization application, on the theory that she "then well knew that she had lied to government officials when applying for her refugee status" in 1998. App. 42a.

A major issue at trial was the impact, if any, of Maslenjak's 1998 statements about her husband's military service on her application for refugee status. The Government tried to show that Maslenjak, who acted as the Primary Applicant ("PA") for her family, had been granted refugee status based on those statements. *See, e.g.*, App. 44-45a. Maslenjak, in contrast, tried to show that she had been granted refugee status based on fear of ethnic persecution. *See, e.g.*, App. 64a.

Although the indictment charged Maslenjak with making "material false statements," App. 41a, and the Government "adduced proof at trial relevant to the materiality element," App. 26a, the Government took the position at trial that proof of a material false statement was not necessary for a conviction under either § 1425(a) or 18 U.S.C. § 1015(a), which proscribes "mak[ing] any false statement under oath" in a naturalization proceeding and served as a predicate offense for the § 1425(a) charge in this case, App. 81-82a. Over Maslenjak's objection, *see* App. 75-82a, the district court (Pearson, J.) sided with the Government, and instructed the jury:

> Count 1 of the indictment charges the defendant with violating Section 1425(a) of Title 18 of the United States Code.
>
> * * *
>
> In order to prove defendant guilty of naturalization fraud, the government must prove each of the following elements beyond a reasonable doubt.
>
> * * *

> First, that defendant procured naturalization;
>
> Second, defendant procured her naturalization contrary to law; and
>
> Third, defendant acted knowingly.
>
> Element Number 1: Procured Naturalization. The government must prove beyond a reasonable doubt that defendant procured naturalization. To establish this element, the government must prove that defendant obtained United States citizenship.
>
> * * *
>
> Element Number 2: Contrary to Law. In order to prove that defendant acted "contrary to law," the government must prove that defendant acted in violation of at least one law governing naturalization.
>
> * * *
>
> Element Number 3: Knowingly. To act knowingly means to act intentionally and voluntarily, and not because of ignorance, mistake, accident or carelessness.

App. 84-86a.

With respect to Element Number 2 ("contrary to law"), the court explained that a predicate offense was 18 U.S.C. § 1015(a), which "prohibits an applicant from knowingly making any false statement under oath, relating to naturalization." App. 85a. And the court specifically instructed the jury that, in order to convict, it did not have to find that any such false statement was material:

> A false statement contained in an immigration or naturalization document *does not have to be material* in order for the defendant to have violated the law in this case. Even if you find that a false statement *did not influence* the decision to approve the defendant's naturalization, the government need *only* prove that one of the defendant's statements was false.

App. 86a (emphasis added).

During deliberations, the jury sent the court the following note:

> At start of trial jury was told that Divna applied for refugee status due to a fear of persecution due to her husband not serving in the military during the war.
>
> On Exhibit #26 it states that Divna was applying for refugee status due to fear of persecution due to her ethnicity.
>
> What was her refugee status granted on?
>
> Fear of not serving?
>
> Or fear of ethnic backlash[?]

App. 90a. The court responded by telling the jury:

> You must make your decision based only on the evidence you saw and heard here in court. ... You may also rely on your collective memories. ... You have now what you need to decide the case.

App. 89a.

The jury returned a guilty verdict both on Count 1 (violation of § 1425(a), which results in automatic

loss of citizenship), App. 91-92a, and Count 2 (violation of 18 U.S.C. § 1423, which does not result in loss of citizenship), App. 93-94a.[1] Shortly thereafter, the district court entered an order revoking Maslenjak's citizenship under 8 U.S.C. § 1451(e) as a mandatory and automatic consequence of her conviction under § 1425(a). App. 95-96a; *see generally Latchin*, 554 F.3d at 715-16; *United States v. Inocencio*, 328 F.3d 1207, 1210 (9th Cir. 2003); *United States v. Moses*, 94 F.3d 182, 187-88 (5th Cir. 1996); *United States v. Maduno*, 40 F.3d 1212, 1217-18 (11th Cir. 1994); *cf. Fedorenko v. United States*, 449 U.S. 490, 517 (1981) (in civil context, "district courts lack equitable discretion to refrain from entering a judgment of denaturalization against a naturalized citizen whose citizenship was procured illegally or by willful misrepresentation of material facts.").

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[1] Count 2 charged Maslenjak with a violation of 18 U.S.C. § 1423, which provides that "[w]hoever knowingly uses for any purpose any ... certificate of naturalization ... unlawfully issued or made ... showing any person to be naturalized or admitted to be a citizen, shall be fined under this title or imprisoned not more than five years, or both." App. 42a. Because that Count applies only insofar as a certificate of naturalization was "unlawfully issued," it is derivative of Count 1, which involves the validity of the underlying certificate. Indeed, with the parties' agreement, the district court instructed the jury that it could convict Maslenjak on Count 2 only if it found her guilty on Count 1. *See* App. 93a ("Complete this page *only* if your verdict on Verdict Form - Count 1 is guilty.") (emphasis added). Thus, if this Court were to reverse the judgment as to Count 1, it follows that Count 2 would necessarily fail as well.

Maslenjak appealed her conviction and the revocation of her citizenship, but the Sixth Circuit affirmed. App. 1-39a. As relevant here, the court held, "[b]ased on the plain language of the statute as well as the overall statutory scheme for denaturalization," that "proof of a material false statement is not required to sustain a conviction under 18 U.S.C. § 1425(a)," App. 7a, or a predicate crime at issue here, 18 U.S.C. § 1015(a), App. 18-19a.

With respect to the statutory text, the court noted that "the term 'material' is found nowhere in § 1425(a)." App. 8a. "Without statutory support for an element of materiality," the court declared, "we are hard-pressed to conclude that materiality is an element of the offense under 18 U.S.C. § 1425(a)." *Id.* Similarly, "[a] material false statement is not an element of the crime under § 1015(a)." App. 21a; *see also* App. 18-19a.

And with respect to the statutory structure, the court stated that the federal immigration laws create "what are essentially two alternative paths for denaturalization," one civil and one criminal. App. 10a. The civil path includes an express materiality requirement. *Id.* (citing 8 U.S.C. § 1451(a) and *Kungys*, 485 U.S. at 772-73). The criminal path does not. App. 12-13a. Rather than construing these two paths in tandem, the Sixth Circuit concluded that "the explicit requirement of materiality under one approach but not the other is actually consistent with a two-track statutory scheme for denaturalization":

> In a civil denaturalization suit, the government can bring its case simply by filing an equitable petition, proceed as in a

> civil case, and satisfy a lesser burden of proof than beyond a reasonable doubt. In light of the slightly lower burden of proof, Congress has required the government to prove that the naturalized citizen has concealed a material fact. By contrast, in a criminal case resulting in denaturalization, the government must prove the charge under 18 U.S.C. § 1425 beyond a reasonable doubt while meeting the demands of constitutional due process. Congress has not required proof of materiality in that scenario arguably because of the higher burden of proof, the additional safeguards for the naturalized citizen's constitutional rights, and the broad sweep of § 1425 itself.

App. 29a.

In so holding, the Sixth Circuit recognized that Maslenjak's position "finds support in a number of other circuit decisions holding that materiality is an implied element of 18 U.S.C. § 1425(a)," but "[b]y and large" deemed these decisions "unpersuasive." App. 22-23a (citing *Munyenyezi*, 781 F.3d at 536; *United States v. Mensah*, 737 F.3d 789, 808-09 (1st Cir. 2013); *Latchin*, 554 F.3d at 712, 713 n.3; *Aladekoba*, 61 F. App'x at 28; *United States v. Agyemang*, No. 99-4496, 230 F.3d 1354, 2000 WL 1335286, at *1 (4th Cir. Sept. 15, 2000); *United States v. Agunbiade*, No. 98-4581, 172 F.3d 864, 1999 WL 26937, at *2 (4th Cir. Jan. 25, 1999) (*per curiam*); *United States v. Puerta*, 982 F.2d 1297, 1301 (9th Cir. 1992)).

In particular, the Sixth Circuit rejected the analysis applied by the Ninth Circuit in *Puerta*, and

followed in other circuits, that the Government is required to establish materiality in a criminal denaturalization proceeding because (1) the Government is required to establish materiality in a civil denaturalization proceeding, and the elements of the two types of proceedings should be construed in tandem, and (2) Congress would not have intended to impose the grave consequence of mandatory denaturalization in either proceeding based on an immaterial false statement. App. 22-25a. The court also noted that in some, but not all, of the other cases, the Government had conceded that it was required to prove a material false statement, or that such a statement was an element of the underlying predicate offense. App. 22-23a & n.8.

Judge Gibbons concurred "with some reluctance," and characterized the court's result as "troublesome." App. 39a (concurring opinion). As she explained, "[i]nitially, I was not inclined to differ from our sister circuits' interpretation of 18 U.S.C. § 1425(a)," but ultimately was "persuaded ... that the view most faithful to the statute is that materiality is not an element" of that provision. *Id.* She emphasized, however, that "I am uncertain what goal Congress intended to further by omitting materiality" from the requirements for criminal denaturalization, and noted that she had "located no other federal criminal statute that punishes a defendant for an immaterial false statement." *Id.* Nor, for that matter, had she "located any analogous context in which the elements of a crime are less onerous than the elements of the related civil penalty proceeding." *Id.* Indeed, "the government, in response to questioning at oral argument, was unable to articulate any interest of

the United States in prosecuting statements that are immaterial." *Id.*

The Sixth Circuit denied a timely petition for rehearing *en banc*. App. 40a. This petition follows.

REASON FOR GRANTING THE WRIT

The Sixth Circuit Erred By Holding, In Direct Conflict With The First, Fourth, Seventh, And Ninth Circuits, That A Naturalized American Citizen Can Be Stripped Of Her Citizenship In A Criminal Proceeding Based On An Immaterial False Statement.

The decision below creates a direct, and acknowledged, circuit conflict on the question whether a naturalized American citizen can be stripped of her citizenship in a criminal proceeding based on an immaterial false statement. The Sixth Circuit answered that question in the affirmative. *See* App. 7-30a. In sharp contrast, four other circuits—the First, Fourth, Seventh, and Ninth—have answered it in the negative. *See Munyenyezi*, 781 F.3d at 536 ("[F]or a section 1425(a) crime: the naturalized citizen must have misrepresented or concealed some fact" and "the fact must have been material.") (internal quotation omitted); *Latchin*, 554 F.3d at 715 ("[A] conviction under § 1425(a) requires proof of both materiality and procurement."); *Alferahin*, 433 F.3d at 1156 ("[Section] 1425(a) contains a requirement of materiality."); *Aladekoba*, 61 F. App'x at 28 (under § 1425(a), "statements must be material in order to be contrary to law"); *Agunbiade*, 172 F.3d 864, 1999 WL 26937, at *2 ("To convict [the defendant], the Government must establish that ... the statements were material.") (citing 18 U.S.C. § 1425(a) and *Puerta*, 982 F.2d at

1301); *Puerta*, 982 F.2d at 1302 ("We conclude that [Congress] has not made immaterial false testimony in naturalization proceedings a crime."); *cf. United States v. Nguyen*, __ F.3d __, 2016 WL 3878217 (8th Cir. July 18, 2016) (noting circuit conflict but declining to take sides because the jury in that case had been instructed that the false statement must be material). This direct and acknowledged circuit conflict on an important and recurring question of federal law warrants this Court's review.

The Sixth Circuit dismissed the contrary line of cases as "unpersuasive." App. 9a, 22a. According to the Sixth Circuit, the jury instructions in this case were "an accurate statement of law because proof of materiality is not required to establish a violation of 18 U.S.C. § 1425(a) or the underlying violation of 18 U.S.C. § 1015(a)." App. 18a. That is so, first and foremost, because neither of those provisions by its terms imposes a materiality requirement. "Without statutory support for an element of materiality, we are hard-pressed to conclude that materiality is an element of [an] offense." App. 8a.

But that is an overly simplistic approach to statutory interpretation. Although Congress sometimes includes an express materiality requirement in a statute, the absence of such a provision is hardly dispositive. Here, § 1425(a) requires materiality through the word "procure." Not any predicate violation of law will establish a violation of that provision; rather, only a predicate violation for the purpose of "procur[ing]" citizenship will suffice. That is what distinguishes the § 1425(a) offense from an underlying predicate offense, and justifies the additional penalties—including

automatic denaturalization—imposed by that provision. Here, the district court essentially read the procurement element out of the statute by instructing the jury that it could convict petitioner under § 1425(a), based on a predicate violation of § 1015(a), "[e]ven if you find that a false statement *did not influence* the decision to approve the defendant's naturalization." App. 86a (emphasis added); *see also id.* ("A false statement contained in an immigration or naturalization document *does not have to be material* in order for the defendant to have violated the law in this case.") (emphasis added). As a matter of law, an immaterial false statement that "did not influence" the naturalization decision could not possibly have "procured" that decision.

The Sixth Circuit, however, criticized the courts—starting with the Ninth Circuit in *Puerta*—that have "read an implied materiality requirement into § 1425(a)." App. 22a. As the Sixth Circuit explained, "[t]he *Puerta* court based its holding on two factors: (1) proof of materiality was required in a civil denaturalization proceeding under 8 U.S.C. § 1451(a); and (2) the 'gravity of the consequences' of mandatory denaturalization justified a showing of materiality under 18 U.S.C. § 1425(a)." App. 22a (quoting *Puerta*, 982 F.2d at 1301). The Sixth Circuit discounted both of those grounds.

As to the relevance of the materiality requirement in *civil* denaturalization proceedings, *see, e.g.*, *Kungys*, 485 U.S. at 767, the Sixth Circuit declared that all of the other circuits had gotten matters backwards. Whereas those courts held that it would be anomalous for Congress to require the Government to establish materiality in civil but not

criminal proceedings, the Sixth Circuit said just the opposite was true. *See* App. 27-30a. In the Sixth Circuit's view, it makes sense for Congress to impose greater *substantive* requirements in civil denaturalization proceedings, where lesser *procedural* protections are required. App. 29a; *see also* App. 10a (criticizing the other circuits' reliance on *Kungys* because they "overlook the fact that Congress has created a two-track system for denaturalization").

The Sixth Circuit's approach is, to say the least, counter-intuitive. It is certainly true that, in our legal system, greater procedural protections are generally required for criminal as opposed to civil proceedings. *See, e.g.*, U.S. Const. amends. V, VI. But that is because criminal proceedings generally have a more direct adverse impact on a person's life, liberty, or property. *See, e.g., In re Winship*, 397 U.S. 358, 363-64 (1970). That is as true in the immigration context as any other. Here, conviction under § 1425 can result in fines and imprisonment of up to 25 years, *see* 18 U.S.C. § 1425, as well as automatic denaturalization, *see* 8 U.S.C. § 1451(e). There is certainly no reason to suppose that Congress would have wanted this criminal denaturalization provision to sweep more broadly than its civil analogue, 8 U.S.C. § 1451(a). To the contrary, Congress hardly would have allowed the Government to (1) fine, (2) imprison, *and* (3) denaturalize an American citizen based on an immaterial false statement, while simultaneously preventing the Government from denaturalizing her in a civil proceeding based solely on the same statement. As Judge Gibbons noted in her concurrence, "the government, in response to

questioning at oral argument, was unable to articulate any interest of the United States in prosecuting statements that are immaterial." App. 39a. That is certainly a reason to construe the statute not to criminalize such statements in the first place.

And as to the "gravity of the consequences" of denaturalization, *Puerta*, 982 F.2d at 1301, the Sixth Circuit acknowledged the force of the argument against "mandatory denaturalization on anything less than proof of a materially false statement," App. 27a. Nonetheless, the court concluded that, "[w]hatever appeal this rationale might have, the argument invites us to overlook the plain text of 18 U.S.C. § 1425(a) and disregard the overall statutory scheme Congress has enacted for denaturalization ...." App. 27a. As noted above, however, the "plain text" of the statute hardly compels the Sixth Circuit's result, and the "overall statutory scheme" supports, not undermines, a materiality requirement in the criminal as well as the civil context.

The Sixth Circuit forthrightly acknowledged that it was creating a circuit conflict regarding the existence of a materiality requirement in § 1425(a), and dismissed the contrary authority as "unpersuasive." *See* App. 9a, 22a. To be sure, the court also observed that "[n]otably, the parties in *Puerta* agreed that the materiality requirement in the civil denaturalization proceeding implied materiality as an element of 18 U.S.C. § 1425(a) as well." App. 22-23a; *see also Puerta*, 982 F.2d at 1301 ("[T]he government agrees with Puerta that § 1425(a) implies a materiality requirement similar to the one used in the denaturalization context.").

But the Ninth Circuit in *Puerta* did not rest its holding on the Government's concession; to the contrary, relying on *Kungys*, it affirmatively held that the materiality requirement is the same in the civil and criminal contexts. *See id.*; *see also id.* at 1304 ("Under *Kungys*, Puerta's false statements were not material, and therefore may not form the basis of a criminal conviction under § 1425.").

And even if there were any doubt on this score, the Ninth Circuit subsequently dispelled it in *Alferahin*. There, the Government challenged the materiality requirement in the criminal context, and invited the Ninth Circuit to overrule *Puerta*. *See* 433 F.3d at 1155 ("The government argues that *Puerta* was decided incorrectly and that § 1425(a) contains no materiality requirement."). The Ninth Circuit declined the invitation, and held that it was not only error but plain error for the district court in that case to have failed to instruct the jury that a false statement must be material for a conviction under § 1425(a). *See id.* at 1156-57. As the Ninth Circuit explained, *Puerta* was based not on the Government's concession on materiality in that case, but "on 'the standards governing materiality in the [civil] denaturalization context,' and our explicit recognition of potentially incongruous materiality requirements in the criminal context." *Id.* at 1157 (quoting *Puerta*, 982 F.2d at 1300-01).

Similarly, the Sixth Circuit erred by asserting that the Seventh Circuit had "adopted the materiality element, at least in part, because, just as in *Puerta*, the parties to the case agreed that it was an element of 18 U.S.C. § 1425(a)." App. 23a (citing *Latchin*, 554 F.3d at 712, 713 n.3). While it is true that the

Government in *Latchin* conceded the materiality point, the Seventh Circuit (like the Ninth Circuit in *Puerta*) did not rest its decision on that concession. To the contrary, the court expressly "agree[d]" with the parties that the distinction between denaturalization in the civil and criminal contexts is "trivial," and that "the civil and criminal statutes both require a material misrepresentation and procurement of citizenship." 554 F.3d at 713 n.3; *see also id.* at 715 ("We have explained that a conviction under § 1425(a) requires proof of both materiality and procurement, as defined by *Kungys*. We are not alone in this view.") (citing *Alferahin*, 433 F.3d at 1155).

Indeed, if anything, the fact that the Government has conceded the materiality requirement of § 1425(a) in some cases, but not others, only underscores the prevailing confusion that warrants this Court's review. If the Government cannot maintain a consistent position on the meaning of that provision, it is no surprise that the courts cannot either. Indeed, the Sixth Circuit noted that the Government not only "has taken a contrary position on the materiality issue in different cases before different courts, including this one," but "has taken inconsistent positions on the materiality issue at key points in the case now before us." App. 25-26a. Judge Gibbons, concurring, was even more blunt: "The government's inconsistency in this case and on this issue is puzzling and indeed inappropriate." App. 39a. *Compare, e.g.*, App. 81-82a (Government contests materiality requirement); *Alferahin*, 433 F.3d at 1156 (same); *United States v. Biheiri*, 293 F. Supp. 2d 656, 657 (E.D. Va. 2003) (same) *with United States v. Shordja*, 598 F. App'x

351, 354 (6th Cir. 2015) (Government concedes materiality requirement); *Latchin*, 554 F.3d at 712 (same); *Puerta*, 982 F.2d at 1301 (same).

Above and beyond the materiality requirement of § 1425(a), moreover, the conviction here cannot stand because § 1015(a)—a predicate offense for the § 1425(a) violation in this case—also requires a material false statement. Such a requirement, as this Court has explained, is not always explicit in statutory text; rather, it may flow from background common-law rules and assumptions about legislative intent. *See, e.g.*, *Neder v. United States*, 527 U.S. 1, 21-22 (1999). Indeed, this Court has long held that the civil denaturalization provision, which by its terms applies to "[1] concealment of a material fact or ... [2] willful misrepresentation," requires a willful misrepresentation of a material fact. *See, e.g.*, *Kungys*, 485 U.S. at 767, 769; *Fedorenko*, 449 U.S. at 507-08 n.28; *Costello*, 365 U.S. at 271-72 n.3. Because the district court here instructed the jury that it could convict Maslenjak under § 1425(a) based on a violation of § 1015(a) without a material false statement, *see* App. 86a, the judgment must be reversed if *either* provision imposes a materiality requirement.

Finally, this Court's review is warranted in light of the signal importance of this issue. Over the past decade alone, more than 6.6 million persons have been naturalized as American citizens. *See* U.S. Citizenship & Immigration Services, *Naturalization Fact Sheet*, *available at* http://tinyurl.com/zwdeske. Until the Sixth Circuit's decision in this case, every circuit to have addressed the issue had concluded that, in the criminal as well as the civil context, a

naturalized American could not be stripped of her citizenship based solely on an immaterial false statement. The Sixth Circuit's decision now leaves these millions of naturalized Americans vulnerable to fines, imprisonment, and loss of citizenship based on immaterial false statements that did not procure their naturalization. The decision thus makes a mockery of this Court's repeated admonition that American citizenship "once conferred should not be taken away without the clearest sort of justification and proof." *Schneiderman v. United States*, 320 U.S. 118, 122 (1943); *see also Costello*, 365 U.S. at 269 ("The Government carries a heavy burden of proof in a proceeding to divest a naturalized citizen of his citizenship."); *Kungys*, 485 U.S. at 783-84 (Brennan, J., concurring) ("[A]s we have repeatedly emphasized, citizenship is a most precious right and as such should never be forfeited on the basis of mere speculation or suspicion.") (internal citation omitted).

And this case provides an ideal vehicle for this Court to clarify the law in this area. Over Maslenjak's objection, *see* App. 75-82a, the district court instructed the jury that it could convict "even if you find that a false statement did not influence the decision to approve the defendant's naturalization," App. 86a. There was ample evidence for the jury to conclude that Maslenjak's statement about her husband's military service was not material to her application for refugee status. Indeed, the jury obviously struggled with the relevance of that statement, as indicated by the note requesting clarification on this score. *See* App. 90a. If the Government must prove materiality to establish a violation of either § 1425(a) or § 1015(a), then

Maslenjak is entitled at a minimum to a new trial before a properly instructed jury.

The inequitable and arbitrary consequences of the decision below are only magnified by the resulting inconsistency in the law. As a result of the Sixth Circuit's decision, juries in that circuit (like the jury in this case) will be instructed that a false statement need not be material to secure a conviction under § 1425(a), *see* App. 86a, whereas juries in the other circuits will be instructed that a false statement must be material to secure a conviction under that provision, *see, e.g.*, *Munyenyezi*, 781 F.3d at 536; *Latchin*, 554 F.3d at 712-15; *Alferahin*, 433 F.3d at 1154-56; *Aladekoba*, 61 F. App'x at 28. The same person should not be placed in jeopardy of losing her citizenship based on an immaterial false statement if prosecuted in Cleveland, but not in Boston, Richmond, Chicago, or San Francisco. Rather, the elements of a federal crime—especially one that carries the draconian consequence of denaturalization—should be uniform across the Nation.

CONCLUSION

For the foregoing reasons, the Court should grant this petition for writ of certiorari.

September 8, 2016

Respectfully submitted,

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APPENDIX

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No. 14-3864

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DIVNA MASLENJAK,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Ohio at Cleveland.

No. 1:13-cr-00126—Benita Y. Pearson, District Judge.

Argued: October 8, 2015

Decided and Filed: April 7, 2016

Before: GIBBONS and McKEAGUE Circuit Judges; ANDERSON, District Judge.*

COUNSEL

ARGUED: Patrick Haney, KIRKLAND & ELLIS, LLP, Washington, D.C., for Appellant. Daniel R. Ranke,

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* The Honorable S. Thomas Anderson, United States District Judge for the Western District of Tennessee, sitting by designation.

UNITED STATES ATTORNEY'S OFFICE, Cleveland, Ohio, for Appellee. **ON BRIEF:** Gregory L. Skidmore, Jeff D. Nye, KIRKLAND & ELLIS, LLP, Washington, D.C., for Appellant. Daniel R. Ranke, UNITED STATES ATTORNEY'S OFFICE, Cleveland, Ohio, for Appellee.

ANDERSON, D.J., delivered the opinion of the court in which GIBBONS and McKEAGUE, JJ., joined. GIBBONS, J. (pg. 27), delivered a separate concurring opinion.

OPINION

S. THOMAS ANDERSON, District Judge. Divna Maslenjak appeals her conviction for knowingly procuring her naturalization contrary to law in violation of 18 U.S.C. § 1425(a). Maslenjak, an ethnic Serb and native of Bosnia, came to the United States in 2000 as a refugee fleeing the civil war in the former Yugoslavia. Maslenjak claimed she and her family feared persecution in Bosnia because her husband had evaded conscription into the Serbian army during the war. In fact, Maslenjak's husband had not only been in the Serbian militia during the war but had served as an officer in a unit implicated in war crimes. Maslenjak was granted refugee status and ultimately obtained her naturalization. Based on her misrepresentations during the immigration process, a jury found Maslenjak guilty of knowingly procuring her naturalization contrary to law in violation of 18 U.S.C. § 1425(a) and of knowingly using an unlawfully issued certificate of naturalization in violation of 18 U.S.C. § 1423.

On appeal, Maslenjak argues that the district court improperly instructed the jury that her false statements need not be material in order to convict Maslenjak of procuring her naturalization contrary to law. In the alternative, Maslenjak argues that the the district court erroneously instructed the jury that it could also convict Maslenjak if the jury found that she lacked good moral character. We reject both arguments and **AFFIRM** the judgment of the district court.

I.

Maslenjak is a native of what is today the nation of Bosnia. Although Maslenjak was born in a predominantly-Serbian village, Muslims made up the majority of the population in the surrounding region and clashed with ethnic Serbs like Maslenjak and her family. Maslenjak briefly moved with her family from her home village in Bosnia to the Serbian city of Belgrade in 1992 and then returned to Bosnia soon thereafter. As the break-up of the former Yugoslavia accelerated in the 1990s and conditions in Bosnia deteriorated, the United States dispatched immigration officials to Belgrade to assist refugees fleeing Bosnia and the ethnic cleansing taking place there during the war. In April 1998, Maslenjak and her family met with Monia Rahmeyer, an officer with the United States Immigration and Naturalization Service in Belgrade, to seek refugee status based on their fear of persecution in their home region of Bosnia. The interview was conducted with a translator.

No writing or recording of the interview exists to show what questions Rahmeyer asked Maslenjak or what responses Maslenjak provided to the questions. The proof at trial showed that Maslenjak acted as the

primary applicant on her family's asylum application. Maslenjak stated under oath during the interview that her family feared persecution back in Bosnia owing to the fact that her husband did not serve in the military during the war. Maslenjak explained that when she returned to Bosnia with her children in 1992, her husband remained in Jagodina, Serbia, to avoid conscription into the Bosnian Serb army during the Bosnian civil war. According to Maslenjak, she and her husband had lived apart from 1992 to 1997. Based on these representations, Maslenjak and her family were granted refugee status in 1999 and immigrated to the United States in September 2000 where they settled in Ohio. Maslenjak subsequently obtained lawful permanent resident status in 2004.

On December 5, 2006, special agents of Immigration and Customs Enforcement questioned Maslenjak's husband, Ratko Maslenjak, at the family home as part of an investigation into whether Mr. Maslenjak had failed to disclose his military service in Serbia in his immigration application. Divna Maslenjak was present in the home during the interview. Ratko Maslenjask was subsequently charged with two counts of making a false statement on a government document in violation of 18 U.S.C. § 1546(a). Specifically, Ratko Maslenjak was accused of failing to report his military service in the Bratunac Brigade of the Army of the Republic Srpska (also known as the VRS), a unit that participated in the genocide of 7,000 to 8,000 Bosnian Muslims in 1995. The government alleged that according to military records, Ratko Maslenjak served as an officer in the Bratunac Bridgade at the time of the genocide, though there was no evidence Mr. Maslenjak had personally

participated in war crimes. Ratko Maslenjak was arrested on the charges on December 13, 2006.

One week after her husband's arrest, Maslenjak filed an N-400 Application for Naturalization on December 20, 2006. One of the questions on the application asked whether she had ever "knowingly given false or misleading information to any U.S. government official while applying for any immigration benefit or to avoid deportation, exclusion, or removal." A separate question asked whether Maslenjak had ever "lied to any U.S. government official to gain entry or admission into the United States." Maslenjak answered "no" to both questions on her written application. Maslenjak was also interviewed under oath about the written answers on her application and declined to make any changes to the answers when given the opportunity to do so. On August 3, 2007, Maslenjak was naturalized as a citizen of the United States.

On October 7, 2007, Ratko Maslenjak was found guilty in the United States District Court for the Northern District of Ohio on both counts of making false statements on a government document under 18 U.S.C. § 1546(a). The district court sentenced Mr. Maslenjak to 24 months probation on January 8, 2008. Because his criminal conviction made him subject to removal, Ratko Maslenjak was taken into ICE custody on January 13, 2009. In order to avoid removal, Ratko Maslenjak filed a petition for asylum. Divna Maslenjak filed an I-130 Petition for Alien Relative and testified on her husband's behalf at his April 28, 2009, asylum hearing. During her testimony Maslenjak admitted that her husband had served in the Republic Srpska military, that they had in fact lived together in

Bosnia after 1992, and that she had lied to the immigration officer about these facts during the refugee application interview in 1998.

On March 5, 2013, a federal grand jury indicted Maslenjak with one count of knowingly procuring her naturalization contrary to law in violation of 18 U.S.C. § 1425(a). The indictment alleged that Maslenjak "made material false statements" on her Form N-400 Application for Naturalization by answering "no" to the questions about "knowingly giv[ing] false or misleading information to any U.S. government official while applying for any immigration benefit" and "[lying] to any U.S. government official to gain entry or admission into the United States" and then giving the same false answers during her interview for naturalization. The second count of the indictment charged Maslenjak with knowingly misusing her unlawfully issued certificate of naturalization to file a Form I-130 Petition for Alien Relative on February 6, 2009, to obtain lawful permanent resident status for her husband, in violation of 18 U.S.C. § 1423. On April 17, 2014, a jury found Maslenjak guilty of both charges. Upon her conviction, the district court sentenced Maslenjak to two years' probation and granted the government's motion to have Maslenjak's naturalization revoked under 8 U.S.C. § 1451(e). Maslenjak's timely appeal followed.

II.

This court reviews challenges to jury instructions for abuse of discretion. *United States v. Richardson*, 793 F.3d 612, 629 (6th Cir. 2015). A district court enjoys broad discretion "in crafting jury instructions and does not abuse its discretion unless the jury charge fails accurately to reflect the law." *United States v.*

Ross, 502 F.3d 521, 527 (6th Cir. 2007). "When jury instructions are claimed to be erroneous, we review the instructions as a whole, in order to determine whether they adequately informed the jury of the relevant considerations and provided a basis in law for aiding the jury in reaching its decision." *United States v. Kuehne*, 547 F.3d 667, 679 (6th Cir. 2008) (internal quotation marks and citation omitted). An improper jury instruction requires reversal "only where the instructions, when viewed as a whole, are found to be confusing, misleading, or prejudicial." *Richardson*, 793 F.3d at 629 (citation omitted).

A.

The first issue presented is whether 18 U.S.C. § 1425(a) contains an implied materiality requirement where a naturalized citizen like Maslenjak faces mandatory denaturalization following a conviction under § 1425(a). The issue is one of first impression in this Circuit.[1] Based on the plain language of the statute as well as the overall statutory scheme for denaturalization, we hold that proof of a material false statement is not required to sustain a conviction under 18 U.S.C. § 1425(a).

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[1] The district court concluded that proof of materiality was not required based on its reading of our unreported decision in *United States v. Tongo*. But we have never squarely addressed the question of whether materiality is an element of the offense under 18 U.S.C. § 1425(a). *United States v. Shordja*, 598 F. App'x 351, 354 (6th Cir. 2015) (noting that this Circuit had not answered the question); *United States v. Tongo*, 16 F.3d 1223, 1994 WL 33967, at **3-4 (6th Cir. Feb. 7, 1994) (refusing to read a materiality requirement into 18 U.S.C. § 1015(a) but apparently holding that there was sufficient evidence of materiality to sustain a conviction under 18 U.S.C. § 1425(a)).

"The starting point for any question of statutory interpretation is the language of the statute itself." *United States v. Coss*, 677 F.3d 278, 283 (6th Cir. 2012) (internal quotation marks and citation omitted). Section 1425(a) makes it a crime to "knowingly procure[] or attempt[] to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or of citizenship." 18 U.S.C. § 1425(a). A plain reading of the statute suggests that materiality is not an element of the offense. "The definition of the elements of a criminal offense is entrusted to the legislature, particularly in the case of federal crimes, which are solely creatures of statute." *Dixon v. United States*, 548 U.S. 1, 7 (2006) (quoting *Liparota v. United States*, 471 U.S. 419, 424 (1985)). Accordingly, courts "ordinarily resist reading words or elements into a statute that do not appear on its face." *Dean v. United States*, 556 U.S. 568, 572 (2009). Obviously, the term "material" is found nowhere in § 1425(a). Without statutory support for an element of materiality, we are hard-pressed to conclude that materiality is an element of the offense under 18 U.S.C. § 1425(a).

As a matter of statutory interpretation, the absence of the term would normally end our inquiry. Maslenjak apparently concedes as much and instead argues on appeal that materiality is implied as an element of 18 U.S.C. § 1425(a). Maslenjak relies on a line of cases where other circuits have held that proof of materiality was required to denaturalize a citizen based on a violation of 18 U.S.C. § 1425(a). The Immigration and Naturalization Act ("INA") sets forth at 8 U.S.C. § 1451 two alternative procedures for denaturalization, one civil and one criminal. The civil procedure under 8 U.S.C. § 1451(a) provides for

denaturalization where one procures citizenship by concealing a material fact and expressly requires proof of materiality. The criminal procedure under 8 U.S.C. § 1451(e) makes denaturalization an automatic consequence of a criminal conviction under 18 U.S.C. § 1425. The cases Maslenjak cites for support have assumed that the required element of materiality applicable to civil denaturalization proceedings under § 1451(a) should also apply to a criminal denaturalization under § 1451(e), and by extension, a prosecution under 18 U.S.C. § 1425(a).

For the reasons more fully discussed below, we find this line of cases unpersuasive. Reading an implied element of materiality into 18 U.S.C. § 1425(a) is inconsistent with other laws criminalizing false statements in immigration proceedings and regulating the naturalization process. As Maslenjak's case illustrates, 18 U.S.C. § 1425 is but one statute within a broader statutory framework governing denaturalization. Here the district court denaturalized Maslenjak under 8 U.S.C. § 1451(e) after she was convicted of violating 18 U.S.C. § 1425(a). And her conviction under § 1425(a) required proof that Maslenjak had obtained her naturalization "contrary to law," meaning the government had to prove that her conduct violated at least one other law applicable to naturalization. At trial the government argued that Maslenjak's conduct violated at least two other laws, a criminal statute, 18 U.S.C. § 1015(a), as well as the INA's prerequisites for naturalization, 8 U.S.C. § 1427(a)(3), and its definitional statute, 8 U.S.C. § 1101(f)(6). In other words, the district court denaturalized Maslenjak under one statute but only after the jury had found her guilty of a crime under a second statute, which required as of one its elements

proof that Maslenjak's act was "contrary to" at least a third statute. We find an implied element of materiality in 18 U.S.C. § 1425(a) to be at odds with the other statutes at issue in Maslenjak's case.

Furthermore, the cases on which Maslenjak relies overlook the fact that Congress has created a two-track system for denaturalization. Denaturalization under § 1451(a) is a civil proceeding with its own evidentiary standard and shifting burden of proof; whereas, denaturalization under § 1451(e) is a mandatory ministerial act following a criminal conviction under 18 U.S.C. § 1425(a). There is little justification for reading an implied element of materiality into 18 U.S.C. § 1425 based on the fact that materiality is a required element for civil denaturalization under 8 U.S.C. § 1451(a). We turn now to examine in more depth each of the statutes applicable to Maslenjak's conviction under 18 U.S.C. § 1425(a) and denaturalization under 8 U.S.C. § 1451(e), starting with the INA itself and the denaturalization statute found at 8 U.S.C. § 1451.

B.

The INA creates what are essentially two alternative paths for denaturalization. Section 1451(a) provides for the revocation or setting aside of a citizen's naturalization where "the order and certificate of naturalization" were "illegally procured or [were] procured by concealment of a material fact or by willful misrepresentation." 8 U.S.C. § 1451(a); *Kungys v. United States*, 485 U.S. 759, 772-73 (1988). The INA at § 1451(a) expressly requires proof that the citizen procured his naturalization by concealing a "material" fact; the term "material" appears on the face of the statute. The Supreme Court in *Kungys* concluded that

materiality is a required element of the government's case in a denaturalization proceeding under § 1451(a). *Kungys*, 485 U.S. at 767-68.[2]

Under § 1451(a), the government institutes a denaturalization proceeding by filing a petition and "affidavit showing good cause" in the district where the naturalized citizen resides. 8 U.S.C. § 1451(a). The naturalized citizen then has 60 days in which to file an answer. § 1451(b). The government has the initial burden to adduce "clear, unequivocal, and convincing" proof that the naturalized citizen has procured his naturalization by one of the improper means listed in § 1451(a), including the concealment of a material fact. *Fedorenko v. United States*, 449 U.S. 490, 505 (1981). "Any less exacting standard would be inconsistent with the importance of the right that is at stake in a denaturalization proceeding." *Id.* at 505-06. Once the government has carried its burden and proven the naturalized citizen improperly procured his naturalization, a "presumption of ineligibility" arises, "which the naturalized citizen is then called upon to rebut." *United States v. Puerta*, 982 F.2d 1297, 1303-04 (9th Cir. 1992) (quoting *Kungys*, 485 U.S. at 783-84 (Brennan, J., concurring)).

The burden-shifting of § 1451(a)'s denaturalization procedure underscores the fact that "[a] denaturalization suit is not a criminal proceeding," *Schneiderman v. United States*, 320 U.S. 118, 160

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[2] The Supreme Court's holding in *Kungys* about the definition of materiality and the question of whether the government's proof against Maslenjak satisfied the *Kungys* standard are not relevant to our decision because we hold that the government did not have to prove a material false statement in order to get a conviction under 18 U.S.C. § 1425(a).

(1943), but a "civil case." *Addington v. Texas*, 441 U.S. 418, 424 (1979). The Supreme Court has described denaturalization under § 1451(a) as "a suit in equity." *Fedorenko*, 449 U.S. at 516 (1981) (citations omitted). Rather than being a penal sanction, denaturalization "imposes no punishment upon an alien who has previously procured a certificate of citizenship by fraud or other illegal conduct. It simply deprives him of his ill-gotten privileges." *Johannessen v. United States*, 225 U.S. 227, 242 (1912). In contrasting a civil denaturalization proceeding under § 1451(a) with a typical criminal proceeding, the Sixth Circuit has remarked "[criminal cases offer many due process protections—*e.g.*, jury trial, indictment, beyond-a-reasonable-doubt burden of proof, right to counsel—that civil proceedings, including denaturalization proceedings, do not." *United States v. Mandycz*, 447 F.3d 951, 962 (6th Cir. 2006).

The denaturalization statute at § 1451(e) goes on to establish a second, alternative path to denaturalization. That paragraph states that "[w]hen a person shall be convicted under [18 U.S.C. § 1425] of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled." 8 U.S.C. § 1451(e). A criminal conviction under 18 U.S.C. § 1425 results in the mandatory denaturalization of the citizen, and the district court's task in this respect becomes purely "ministerial." *United States v. Inocencio*, 328 F.3d 1207, 1209 (9th Cir. 2003); *United States v. Maduno*, 40 F.3d 1212, 1217-18 (11th Cir. 1994); *United States v. Djanson*, 578 F. App'x 238, 241 (4th Cir. 2014). In

other words, a district court lacks any discretion in the matter, and no further process is due once the naturalized citizen is convicted of knowingly procuring his naturalization "contrary to law." And as in any criminal prosecution, the government has the burden to establish the elements of the offense beyond a reasonable doubt, and the accused has the right to all of the constitutional due process he would otherwise not receive as part of a civil denaturalization proceeding under § 1451(a), including the right not to testify or put on proof at all. *See Carter v. Kentucky*, 450 U.S. 288, 295-300 (1981). As already mentioned, it is this scenario that is at issue in Maslenjak's appeal.

Even though the district court denaturalized Maslenjak pursuant to 8 U.S.C. § 1451(e), Maslenjak does not argue that 8 U.S.C. § 1451(e) contains an implied element of materiality, perhaps with good reason. Unlike paragraph (a), paragraph (e) of 8 U.S.C. § 1451 never mentions "materiality," and this omission of the term strongly suggests that no showing of materiality is required for denaturalization under § 1451(e). "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Bates v. United States*, 522 U.S. 23, 29-30 (1997) (other citations omitted). As is clear from the statutory text, 8 U.S.C. § 1451(e) simply cross-references 18 U.S.C. § 1425 and makes denaturalization an automatic consequence of the criminal conviction. Maslenjak's argument then is that materiality is an implied element of the offense under 18 U.S.C. § 1425(a), which now brings us to the elements of that statute.

C.

As previously noted, 18 U.S.C. § 1425(a) makes it a crime to "knowingly procure[] or attempt[] to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or of citizenship." 18 U.S.C. § 1425(a). We pause to note that the expansive language of the statute captures much more than making false statements. Paragraph (a) makes it illegal not only to procure or obtain naturalization but also any "documentary or other proof of naturalization or citizenship." Moreover, the statute criminalizes not just procuring these things only for one's self but for "any person." So a naturalized citizen might violate § 1425(a), for example, by improperly obtaining a forged naturalization certificate for a family member. The naturalized citizen's conduct of helping another person fraudulently procure forged citizenship papers violates § 1425(a), thereby making the naturalized citizen subject to mandatory de naturalization under 8 U.S.C. § 1451(e). The point is 18 U.S.C. § 1425(a) criminalizes far more than just the conduct of which Maslenjak was convicted, making a false statement on an application for naturalization.

In order to prove the offense in this case, the government had to establish that (1) Maslenjak procured her naturalization; (2) that she procured it in some manner contrary to law; and (3) that she did so knowingly. It is undisputed in this appeal that the district court correctly instructed the jury on the first and last elements. The real dispute concerns the district court's definition of "contrary to law" in its instructions to the jury and in particular its instruction

that a false statement need not be material in order for the statement to be "contrary to law."

The district court explained to the jury that making a false statement under oath in an immigration proceeding was "contrary to law" and violated 18 U.S.C. § 1425(a) if the act of making a false statement violated the immigration laws, regardless of whether the statement was material. The district court specified that "[o]ne of the laws which governs naturalization prohibits an applicant from knowingly making any false statement under oath, relating to naturalization." The district court's instruction in this regard clearly tracked the language of 18 U.S.C. § 1015(a), which makes it a crime to make "any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship, or registration of aliens." 18 U.S.C. § 1015(a).

We hold that the district court's instruction on the "contrary to law" element was a correct statement of the law. First, 18 U.S.C. § 1425(a)'s "contrary to law" element is broad enough to cover the predicate violation of law at issue, namely, making false statements in an immigration proceeding in violation of 18 U.S.C. § 1015(a). We construe the phrase "contrary to law" to mean "contrary to all laws applicable to naturalization." The Supreme Court has emphasized the importance of strict compliance with the laws and requirements for naturalization.

> An alien who seeks political rights as a member of this Nation can rightfully obtain them only upon terms and conditions specified by Congress. No alien has the

> slightest right to naturalization unless all statutory requirements are complied with; and every certificate of citizenship must be treated as granted upon condition that the government may challenge it ... and demand its cancellation unless issued in accordance with such requirements."

Fedorenko, 449 U.S. at 506 (quoting *United States v. Ginsberg*, 243 U.S. 472, 474-475 (1917)). The INA spells out these requirements. It follows then that the failure to comply with the INA's requirements for naturalization would be "contrary to law."

We have also affirmed convictions under § 1425(a) where the predicate or underlying violation of law was another criminal offense, and not just a failure to comply with the INA. *United States v. Damrah*, 412 F.3d 618, 622-23 (6th Cir. 2005) (Gibbons, J.) (affirming conviction under § 1425(a) & (b) for underlying violations of 18 U.S.C. §§ 1001, 1015(a)). Other circuits have likewise affirmed convictions under § 1425(a) for underlying criminal conduct. *United States v. Munyenyezi*, 781 F.3d 532, 536 (1st Cir.), *cert. denied*, No. 15-5264, 2015 WL 4456739 (Oct. 5, 2015) (affirming conviction under § 1425(a) for underlying violation of 18 U.S.C. § 1001(a)); *United States v. Mensah*, 737 F.3d 789, 803 (1st Cir. 2013) (affirming conviction under § 1425(a) for underlying violation of 18 U.S.C. § 1015(a)); *accord United States v. Alameh*, 341 F.3d 167, 171-72 (2d Cir. 2003) (affirming conviction under § 1425(b) for underlying violation of 18 U.S.C. § 1546(a)).[3] The phrase "contrary to law" is

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[3] The Board of Immigration Appeals has construed 18 U.S.C. § 1425(a)'s contrary to law element to include violations of

broad enough to include not only violations of the INA's administrative requirements for naturalization but also any criminal offense against the United States pertaining to naturalization, including making false statements.

The Ninth Circuit in *United States v. Puerta* seemed to read § 1425(a)'s "contrary to law" element to mean "contrary to the INA," and only the INA. The *Puerta* court stated "Congress has addressed the impact of immaterial false testimony *only* in the 'good moral character' provision in 8 U.S.C. § 1101(f)(6)." *Puerta*, 982 F.2d at 1302 (emphasis added). In point of fact, Congress has addressed the impact of immaterial false testimony in Title 18 and made it a criminal offense to make "any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship, or registration of aliens." 18 U.S.C. § 1015(a). The Ninth Circuit apparently understood "contrary to law" to mean only "contrary to the INA." But if § 1425(a) reached only violations of the INA and its administrative prerequisites for citizenship, then § 1425(a)'s "contrary to law" element would actually mean "contrary to the INA but not 18 U.S.C. § 1015(a) or any other federal law criminalizing specific conduct in an immigration proceeding." We find no principled reason to construe the phrase in this limited way.[4] The most reasoned construction of

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both 18 U.S.C. § 1001 (the federal perjury statute) and § 1015(a). *Amouzadehv. Winfrey*, 467 F.3d 451, 457-58 (5th Cir. 2006).

[4] It is true that the phrase "contrary to law" appears in only a handful of federal criminal statutes besides 18 U.S.C. § 1425(a). *See* 18 U.S.C. § 545 (smuggling goods into the United States "contrary to law"); 18 U.S.C. § 1693 (mishandling mail "contrary to law"); 18 U.S.C. § 1697 (transport of persons acting as private

§ 1425(a)'s "contrary to law" element is simply "contrary to all laws applicable to naturalization," and not just the INA.

Second, the district court's instruction was an accurate statement of law because proof of materiality is not required to establish a violation of 18 U.S.C. § 1425(a) or the underlying violation of 18 U.S.C. § 1015(a). Having determined that § 1425(a) on its face does not require proof of materiality, we next look to Maslenjak's underlying conduct by which she procured her naturalization "contrary to law," making false statements in her immigration proceedings. Title 18 U.S.C. § 1015(a) criminalizes "any false statement under oath ..." in an immigration proceeding. 18 U.S.C. § 1015(a). We have construed § 1015(a) in a previous unreported decision and concluded that materiality is not an element of the offense. *Tongo,* 16 F.3d 1223, 1994 WL 33967, at **3-4. Every other circuit to consider the question has reached the same result and held that materiality is not an element of

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express who themselves transport letters "contrary to law"). As such, the case law construing the phrase "contrary to law," as Title 18 uses it, is somewhat scarce. Nevertheless, our construction of the federal smuggling statute, 18 U.S.C. § 545, and its "contrary to law" element further supports the notion that "contrary to law" should be read broadly to include criminal offenses against the laws of the United States. In *United States v. Teh,* the defendant was charged with smuggling bootleg films into the country "contrary to law" in violation of § 545. *United States v. Teh,* 535 F.3d 511 (6th Cir. 2008) (Gibbons, J.). We concluded that "contrary to law" under § 545 could include violations of 18 U.S.C. § 2318, which makes it a crime to traffic in counterfeit labels or packaging for motion pictures. *Id.* at 517-19. The case illustrates the principle that "contrary to law" should be understood to include "contrary to" federal criminal statutes, not just procedural and administrative requirements.

§ 1015(a). *United States v. Youssef*, 547 F.3d 1090, 1094 (9th Cir. 2008); *United States v. Abuagla*, 336 F.3d 277, 278 (4th Cir. 2003); Seventh Cir. Pattern Jury Instr. for 18 U.S.C. § 1015(a). The Ninth Circuit reasoned that § 1015(a) does not contain a materiality requirement based on "Congress's omission of 'material' from § 1015(a), combined with its inclusion of 'material' in a similar statutory provision (§ 1001(a)) ...." *Youssef*, 547 F.3d at 1094.[5] Therefore, § 1015(a) does not require proof of a false statement of material fact.

It follows that where as here the government satisfies the "contrary to law" element of § 1425(a) by proving an underlying violation of law and the underlying violation does not have as one of its elements a material false statement, no additional proof of materiality is required to obtain a conviction under § 1425(a). Otherwise, requiring proof of materiality simply as an element of § 1425(a) would lead to incongruous legal outcomes. For example, a person could violate 18 U.S.C. § 1015(a) by making "any [immaterial] false statement" on an application for naturalization but not be guilty of procuring his naturalization "contrary to law" in violation of 18 U.S.C. § 1425(a), unless the government could also show that the false statement was material. This result also alters the plain meaning of "contrary to

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[5] When asked at oral argument if any other federal statute criminalized immaterial false states, the United States inexplicably answered that there were none. Not only does 18 U.S.C. § 1015(a) criminalize immaterial false statements, the statute criminalizes immaterial false statements in immigration proceedings, and the district court's instructions to the jury on the "contrary to law" element closely tracked the language of § 1015(a).

law" to "contrary to the laws applicable to naturalization except 18 U.S.C. § 1015(a)." We find no warrant for such a cramped reading of the phrase "contrary to law."

Of course, the predicate act or conduct matters in a prosecution under § 1425(a). Where the government establishes the "contrary to law" element of § 1425(a) by proving an underlying criminal act and the criminal act has as one of its elements a material false statement, proof of materiality should arguably be required to obtain a conviction under § 1425(a). Our recent case of *United States v. Shordja*, 598 F. App'x 351 (6th Cir. 2015) illustrates this proposition. Like Maslenjak, the defendant in *Shordja* was charged with procuring his naturalization in violation of 18 U.S.C. § 1425(a). The defendant provided the same false answers to the same questions on the same application for naturalization. *Shordja*, 598 F. App'x at 351-52. But the government in *Shordja* conceded that proof of materiality was a required element of the offense under § 1425(a), a position seemingly inconsistent with its stance in this appeal. *Id.* at 354 ("Although we have not yet addressed the question of whether to recognize a materiality requirement in § 1425(a), the Government concedes that the statutory provision contains a materiality element.").[6]

However, unlike Maslenjak, the defendant in *Shordja* was also charged with one count of making false statements to a government official in violation of

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[6] Without deciding whether materiality was an element of 18 U.S.C. § 1425(a), we held that it was not plain error for the district court to fail to instruct the jury on materiality and that there was sufficient evidence of materiality to sustain the conviction. *Shordja*, 598 F. App'x at 354-55.

18 U.S.C. § 1001(a)(2). *See also Latchin*, 554 F.3d at 712. In other words, the government's theory of the case was that the defendant procured his naturalization "contrary to law" by violating the federal perjury statute, which has as one of its elements proof of materiality. 18 U.S.C. § 1001(a)(2) ("[W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully makes any materially false, fictitious, or fraudulent statement or representation ... shall be [punished]."); *United States v. Gatewood*, 173 F.3d 983, 986 (6th Cir. 1999) ("The elements required to establish a violation of 18 U.S.C. § 1001 are .... that the false statement was material."). Where as in *Shorjda* a defendant is charged under 18 U.S.C. § 1425(a) with knowingly procuring naturalization contrary to law and the predicate violation of law is perjury under § 1001(a), it stands to reason that proof of materiality should be required to prove that the defendant procured his naturalization "contrary to law."

We need not fully resolve this last point to decide this case. Maslenjak was not charged under the perjury statute, and the district court did not instruct the jury on the elements of § 1001(a). The theory of the government's case against Maslenjak was that she procured her naturalization "contrary to law," in part by making false statements in an immigration proceeding in violation of 18 U.S.C. § 1015(a), not by committing perjury in violation of § 1001(a). A material false statement is not an element of the crime under § 1015(a). Therefore, we conclude that materiality is not an implied element of 18 U.S.C. § 1425(a) where the underlying "contrary to the law"

conduct is making a false statement in violation of 18 U.S.C. § 1015(a).

We recognize that Maslenjak's position finds support in a number of other circuit decisions holding that materiality is an implied element of 18 U.S.C. § 1425(a). By and large, we find these decisions unpersuasive. The leading case supporting Maslenjak's position is *United States v. Puerta* where the Ninth Circuit read an implied materiality requirement into § 1425(a). *Puerta*, 982 F.2d at 1301. The defendant in *Puerta* made false statements on his application for naturalization where he did not answer a question about whether he had ever used an alias (he had) and answered that he had not been absent from the United States since he entered the country for permanent residence (he was). *Id.* at 1298-99. The defendant was charged under 18 U.S.C. § 1425(a), and following a bench trial, the district court found him guilty of procuring his naturalization contrary to law and proceeded to denaturalize him pursuant to 8 U.S.C. § 1451(e). *Id.* at 1299-1300.

The Ninth Circuit reversed, holding that the government had to prove that the defendant's statements were material. The *Puerta* court based its holding on two factors: (1) proof of materiality was required in a civil denaturalization proceeding under 8 U.S.C. § 1451(a); and (2) the "gravity of the consequences" of mandatory denaturalization justified a showing of materiality under 18 U.S.C. § 1425(a). *Id.* at 1301 (citation omitted). Notably, the parties in *Puerta* agreed that the materiality requirement in the civil denaturalization proceeding implied materiality

as an element of 18 U.S.C. § 1425(a) as well. *Id.*[7] As a result, the Ninth Circuit did not apply the typical rules of statutory construction. The Ninth Circuit ultimately concluded that "Puerta's false statements were not material, and therefore may not form the basis of a criminal conviction under § 1425." *Id.* at 1304.

Other circuits have followed the Ninth Circuit's decision in *Puerta* but without engaging in their own analysis of the statutory language. The First Circuit has assumed like the Ninth Circuit that materiality is an element of 18 U.S.C. § 1425(a) because it is an element of civil denaturalization under 8 U.S.C. § 1451(a). *Mensah,* 737 F.3d at 808-09; *Munyenyezi,* 781 F.3d at 536. The Seventh Circuit adopted the materiality element, at least in part, because, just as in *Puerta,* the parties to the case agreed that it was an element of 18 U.S.C. § 1425(a). *United States v. Latchin,* 554 F.3d 709, 712, 713 n.3 (7th Cir. 2009).[8] And the Fourth Circuit has simply followed *Puerta* without any supporting reasoning of its own. *United States v. Aladekoba,* 61 F. App'x 27, 28 (4th Cir. 2003); *United States v. Agyemang,* 230 F.3d 1354, 2000 WL 1335286, *1 (4th Cir. Sept. 15, 2000); *United States v. Agunbiade,* 172 F.3d 864, 1999 WL 26937, at *2 (4th Cir. Jan. 25, 1999).

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[7] As *Puerta* illustrates, the government has taken inconsistent positions on the materiality issue in different cases before different courts at different times. We address this issue more fully below.

[8] The Seventh Circuit also analyzed the false statements at issue in *Latchin* as violations of 18 U.S.C. § 1001(a), the federal perjury statute. *Latchin,* 554 F.3d at 712. For the reasons already explained above, the distinction is important because 18 U.S.C. § 1001(a) expressly requires proof of materiality as an element of the offense. *See* 18 U.S.C. § 1001(a).

We find that *Puerta's* approach to materiality suffers from a number of problems. First and foremost, as a matter of statutory construction, 18 U.S.C. § 1425(a) does not suggest that materiality is an element of the offense. The term "material" does not appear in 18 U.S.C. § 1425(a) nor, for that matter, in 8 U.S.C. § 1451(e). This is not surprising because § 1425(a) criminalizes procuring citizenship or naturalization in any way that is "contrary to law," not just by making false statements. In fact, 18 U.S.C. § 1425(a) reaches far more conduct than making false statements or even procuring one's own citizenship in some way contrary to law. The statute can be properly read to criminalize the procurement of any proof of citizenship or document related to naturalization or citizenship for "any person," not just one's own self. The Ninth Circuit's conclusion that § 1425(a) contains an implied element of materiality then lacks any support in what is already the broad and plain language of the statute.

The Ninth Circuit's approach also ignores the fact that other violations of federal law pertaining to false statements in immigration proceedings do not require proof of materiality. It is well settled in the Ninth Circuit (and in other circuits following the Ninth's holding in *Puerto)* that proof of materiality is not a required element of 18 U.S.C. § 1015(a). *Youssef,* 547 F.3d at 1094; *see also Abuagla,* 336 F.3d at 278; Seventh Cir. Pattern Jury Instr. for 18 U.S.C. § 1015(a). Nor is proof of materiality required in other sections of the INA addressing false testimony. The INA at 8 U.S.C. § 1427(a)(3) makes "good moral character" a condition precedent to naturalization. 8 U.S.C. § 1427(a)(3). And 8 U.S.C. § 1101(f)(6) precludes a finding of "good moral character" for any

naturalization applicant who "has given false testimony for the purpose of obtaining any benefit" under the INA. 8 U.S.C. § 1101(f)(6).[9] The Supreme Court in *Kungys* concluded that § 1101(f)(6) does not contain a materiality requirement. *Kungys*, 485 U.S. at 779-80 (holding that 8 U.S.C. § 1101(f)(6) does not contain a materiality requirement for false testimony). Reading an implied materiality element into § 1425(a) would mean then that a defendant could give immaterial false testimony for the purpose of obtaining an immigration benefit, thereby failing to meet the requirements for naturalization under 8 U.S.C. § 1427(a)(3) and 8 U.S.C. § 1101(f)(6) but still not be guilty of knowingly procuring his citizenship "contrary to law" in violation of 18 U.S.C. § 1425(a). Requiring proof of materiality under 18 U.S.C. § 1425(a) is incompatible with these other federal laws applicable to false statements in immigration proceedings.

As *Puerta* and its progeny highlight, the United States has taken a contrary position on the materiality issue in different cases before different courts, including this one, though we have noted why *Shordja* is distinguishable in this regard. While the

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[9] The district court also instructed the jury that it could find Maslenjak guilty under 18 U.S.C. § 1425(a) if the jury found that she had procured her naturalization "contrary to" the INA at 8 U.S.C. §§ 1427(a)(3) and 1101(f)(6), though the jury instructions did not actually cite those code sections. The district court instructed the jury that "false testimony" would defeat a finding of good moral character. The instructions did not, however, address whether the false testimony had to concern a material fact. On appeal Maslenjak has not challenged this aspect of the jury instructions, though she does raise other objections to the district court's instructions on good moral character. We address those challenges more fully below.

government could not account for these inconsistencies at oral argument, "[t]here is, of course, no rule of law to the effect that the Government must be consistent in its stance in litigation over the years." *Barrett v. United States*, 423 U.S. 212, 222 n.6 (1976) (citation omitted); *see also* 13 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 3530 (3d ed.) ("Just as courts are not bound, so also is the government not bound. The fact that it has conceded a point in one case does not preclude it, without more, from changing its position in a later case.").

Still, it is one thing to take contrary positions in different cases "over the years." It is more problematic that the government has taken inconsistent positions on the materiality issue at key points in the case now before us. The government sought an indictment charging Maslenjak with making material false statements and even adduced proof at trial relevant to the materiality element only to argue at the charge conference and now on appeal that proof of materiality is not required.[10] The government's prevarication notwithstanding, our task is to determine whether the district court properly charged the jury on the elements of the offense, a task which begins and ends with a proper construction of the relevant statutes. Therefore, the government's inconsistency does not

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[10] While Maslenjak calls attention to the discrepancy between the indictment and the jury instructions, she has not argued on appeal that the jury instructions resulted in a constructive amendment of the indictment. *See United States v. Hynes*, 467 F.3d 951, 962 (6th Cir. 2006) (holding that a constructive amendment of the indictment occurs where the defendant can show "a combination of evidence *and* jury instructions that effectively alters the terms of the indictment"). As a result, we need not consider this issue further.

affect our analysis of the plain language of 18 U.S.C. § 1425(a) or any of the other statutes implicating Maslenjak's denaturalization.

The only compelling reason left to adopt the Ninth Circuit's approach to materiality in *Puerta* is the equity of mandatory denaturalization on anything less than proof of a materially false statement. As Maslenjak asserted at oral argument, denaturalization is a "unique" and "severe" sanction amounting to "banishment," and so the same evidentiary standard should apply whether the government seeks denaturalization in a civil proceeding or a criminal proceeding. Whatever appeal this rationale might have, the argument invites us to overlook the plain text of 18 U.S.C. § 1425(a) and disregard the overall statutory scheme Congress has enacted for denaturalization under the INA.

Construing 8 U.S.C. § 1451 and 18 U.S.C. § 1425 together, Congress has created two alternative approaches to denaturalization, one civil and one criminal. The denaturalization procedure established under 8 U.S.C. § 1451(a) is civil and equitable in nature, initiated simply by filing a petition in the district court where the citizen resides, and carries a "clear, unequivocal, convincing" standard of proof. Section 1451(e) creates a second statutory path to denaturalization which is criminal in nature, because § 1451(e) makes denaturalization mandatory where the citizen is found guilty of violating 18 U.S.C. § 1425. Obviously, the alternative procedure requires the government to seek an indictment and establish probable cause, afford the citizen all of the constitutional due process rights owed whenever a person is accused of a criminal act, and meet a higher

burden of proof (beyond a reasonable doubt).[11] *See Mandycz*, 447 F.3d at 962 ("Criminal cases offer many due process protections—*e.g.*, jury trial, indictment, beyond-a-reasonable-doubt burden of proof, right to counsel—that civil proceedings, including denaturalization proceedings, do not").

Accepting then that Congress has provided two alternative procedures and standards of proof under

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[11] The Supreme Court has sent mixed signals about where the "clear, unequivocal, and convincing" standard of proof falls on the continuum of evidentiary burdens and particularly how it differs from proof beyond a reasonable doubt. In an older decision, the Supreme Court described the "clear, unequivocal, and convincing" burden as "substantially identical with that required in criminal cases—proof beyond a reasonable doubt." *Klapprott v. United States*, 335 U.S. 601, 612 (1949). Somewhat more recently, the Supreme Court described the "clear, unequivocal, and convincing" burden as an "intermediate standard" designed to "protect particularly important individual interests in various civil cases" including civil denaturalization proceedings under U.S.C. § 1451(a). *Addington v. Texas*, 441 U.S. 418, 424-25 (1979). The *Addington* court went on to remark in dicta that the word "unequivocal" "taken by itself means proof that admits of no doubt, a burden approximating, if not exceeding, that used in criminal cases." *Id.* at 432. Later still, the Supreme Court considered the standard of proof in a deportation case and noted that "[t]he BIA for its part has required only 'clear, unequivocal and convincing' evidence of the respondent's deportability, not proof beyond a reasonable doubt." *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984). This single comment suggests that the clear, unequivocal, and convincing burden of proof is an elevated standard but still just short of or only "approximating" proof beyond a reasonable doubt. Otherwise, we have summarized the "clear, unequivocal, and convincing" standard as follows: "So, the omission of 'unequivocal' makes a difference. The 'clear, unequivocal, and convincing standard' is a more demanding degree of proof than the 'clear and convincing' standard." *Ward v. Holder*, 733 F.3d 601, 605 (6th Cir. 2013).

§ 1451(a) and § 1451(e), the explicit requirement of materiality under one approach but not the other is actually consistent with a two-track statutory scheme for denaturalization. In a civil denaturalization suit, the government can bring its case simply by filing an equitable petition, proceed as in a civil case, and satisfy a lesser burden of proof than beyond a reasonable doubt. In light of the slightly lower burden of proof, Congress has required the government to prove that the naturalized citizen has concealed a material fact. By contrast, in a criminal case resulting in denaturalization, the government must prove the charge under 18 U.S.C. § 1425 beyond a reasonable doubt while meeting the demands of constitutional due process. Congress has not required proof of materiality in that scenario arguably because of the higher burden of proof, the additional safeguards for the naturalized citizen's constitutional rights, and the broad sweep of § 1425 itself.

So in a criminal prosecution under § 1425, the Constitution itself cures any concerns about the "gravity of the consequences" of mandatory denaturalization without requiring proof of materiality. *Puerta* at 1301. And if it were otherwise and materiality was a required element of both civil and criminal denaturalization proceedings, the government would have little incentive to ever pursue the denaturalization of a naturalized citizen for making false statements through a criminal indictment under 18 U.S.C. § 1425. The government could achieve the same result, denaturalization, by proving the same materiality element but in a civil proceeding under a lesser standard of proof and with less constitutional due process. Thus, reading an implied element of materiality into 18 U.S.C. § 1425(a)

would yield yet another unintended, anomalous result. Despite the equities supporting Maslenjak's position, "[w]e are not at liberty to rewrite the statute to reflect a meaning we deem more desirable" but "[i]nstead, we must give effect to the text Congress enacted." *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 228 (2008). In the final analysis, we find the arguments and reasoning supporting an implied element of materiality under 18 U.S.C. § 1425 to be lacking.

Having established that materiality is not required to prove a violation of 18 U.S.C. § 1425(a) or 18 U.S.C. § 1015(a), we hold that the district court's instruction was a correct statement of the law. With this holding, we need not reach the issue of whether the government proved Maslenjak's false statements to be material.

III.

In her second claim on appeal, Maslenjak argues that the district court erroneously instructed the jury that it could also convict her under 18 U.S.C. § 1425(a) if it found that Maslenjak did not possess good moral character. As already mentioned, 8 U.S.C. § 1427(a)(3) establishes "good moral character" as a requirement for naturalization. 8 U.S.C. § 1427(a)(3). Although the INA does not define what "good moral character" is, the INA does define what it is not. Under 8 U.S.C. § 1101(f)(6), no one can be found to be a person of "good moral character" if the person "has given false testimony for the purpose of obtaining any benefit" under the INA. 8 U.S.C. § 1101(f)(6). In its instructions to the jury defining the "contrary to law" element of the offense under 18 U.S.C. § 1425(a), the district court stated that Maslenjak did not satisfy the "good moral character" requirement of 8 U.S.C.

§ 1427(a) if the government could show that she had given "false testimony for the purpose of obtaining any immigration benefit." ECF 62, Jury Instr., Page ID 1121.

On appeal, Maslenjak does not argue that false testimony to obtain an immigration benefit cannot satisfy § 1425(a)'s "contrary to law" element. Several circuits have affirmed denaturalization based on a naturalized citizen's false testimony and violation of the good moral character requirements of 8 U.S.C. § 1101(f)(6). *Munyenyezi*, 781 F.3d at 537 (affirming conviction under § 1425(a) and subsequent denaturalization under 8 U.S.C. § 1451(e) based on failure to meet "good moral character"); *United States v. Rogers*, 104 F.3d 355, 1996 WL 685759, at * 1 (2d Cir. Nov. 29, 1996) (same); *see also United States v. Suarez*, 664 F.3d 655, 658 (7th Cir. 2011) (affirming civil denaturalization under 8 U.S.C. § 1451(a) for underlying violation of 8 U.S.C. § 1101(f)(3) & (8)); *United States v. Dang*, 488 F.3d 1135, 1139-40 (9th Cir. 2007) (affirming civil denaturalization under 8 U.S.C. § 1451(a) for underlying violation of 8 U.S.C. § 1101(f)(6)); *United States v. Jean-Baptiste*, 395 F.3d 1190, 1193-94 (11th Cir. 2005) (affirming civil denaturalization under 8 U.S.C. § 1451(a) for underlying violation of 8 U.S.C. § 1101(f)(3) & (8)); *United States v. Sokolov*, 814 F.2d 864, 873-74 (2d Cir. 1987 (affirming civil denaturalization under 8 U.S.C. § 1451(a) for underlying violation of 8 U.S.C. § 1101(f)(6)). Instead Maslenjak argues that convicting her for lack of good moral character is unconstitutional. We find both of her constitutional arguments to be without merit.

A.

First, Maslenjak contends that her conviction amounts to an unconstitutional criminal punishment based on her status. The Supreme Court has held that a state law criminalizing status and not conduct violates the Eighth Amendment's prohibition on cruel and unusual punishment. *Robinson v. California*, 370 U.S. 660, 667 (1962) (striking down a criminal law against being drug addict); *but see Powell v. State of Tex.*, 392 U.S. 514, 533 (1968) (upholding a criminal law against public drunkenness). In other words, the law can only punish "doing" (the *actus reus)* and not merely "being" (what could be called the *status reus).* Maslenjak's conviction does not run afoul of this principle. Maslenjak was found guilty of knowingly procuring her naturalization contrary to law, and her guilty act was illegally procuring or obtaining her naturalization. Section 1425(a) criminalizes conduct and not status by punishing the act of knowingly procuring naturalization in some way contrary to the laws applicable to naturalization. Section 1425(a) does not make it a crime to lack good moral character. Maslenjak's first constitutional challenge is not convincing.

It is true that the government's theory of the case was based on Maslenjak's ineligibility for naturalization. The United States presented proof at trial and argued to the jury that Maslenjak was not eligible for naturalization because of her false testimony about the answers on her N-400 Application for Naturalization. Under 8 U.S.C. § 1101(f)(6), Maslenjak's false testimony for the purpose of obtaining a benefit disqualified her as a candidate for naturalization. And it is well-established that

"[c]itizenship is illegally procured any time the applicant has failed to comply with any of the congressionally imposed prerequisites to the acquisition of citizenship." *United States v. Sprogis*, 763 F.2d 115, 117 n.2 (2d Cir. 1985) (quoting *Fedorenko*, 449 U.S. at 506)). Maslenjak was not found guilty of a particular status, i.e. a lack of good moral character, but guilty of culpable conduct, i.e. procuring her naturalization with the knowledge that she was ineligible because she had given false testimony.

Maslenjak again relies on the Ninth Circuit's decision in *Puerta* for support. The Ninth Circuit held there that "simply being a person who cannot establish [good moral character] in court is not a crime." *Puerta*, 982 F.2d at 1302. The Ninth Circuit's reasoning on this point is not persuasive. In a prosecution under 18 U.S.C. § 1425(a), the defendant does not have the burden to establish anything at all, including her good moral character. It is the government's burden to prove beyond a reasonable doubt that the defendant knowingly procured her naturalization in some way contrary to law, all in violation of a criminal statute, 18 U.S.C. § 1425(a). Although the INA at 8 U.S.C. § 1101(f)(6) defines what good moral character is not, the INA does not make it crime to lack good moral character. The Ninth Circuit also concluded that Congress had only addressed false testimony in an immigration proceeding at 8 U.S.C. § 1101(f)(6). But, as we have already noted, the Ninth Circuit's observation is not an accurate statement of law. Congress has actually made it a crime to make "any false statement under oath" in a matter related to naturalization pursuant to 18 U.S.C. § 1015(a). As such, there is no support for Maslenjak's claim that

8 U.S.C. § 1101(f)(6) somehow creates a status-based crime for lacking good moral character.

B.

Second, Maslenjak claims that the INA's good moral character requirement is unconstitutionally vague. "As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *United States v. Coss*, 677 F.3d 278, 289 (6th Cir. 2012) (quoting *Gonzales v. Carhart*, 550 U.S. 124, 148-49 (2007) (other quotations omitted)). "What renders a statute vague is not the possibility that it will sometimes be difficult to determine whether the incriminating fact it establishes has been proved; but rather the indeterminacy of precisely what that fact is." *United States v. Williams*, 553 U.S. 285, 306 (2008). A challenge based on a statute's purported vagueness must be considered on "an as-applied basis" so long as the statute does not involve First Amendment rights. *Johnson v. United States*, 135 S. Ct. 2551, 2580, (2015) (Thomas, J., concurring) (quoting *United States v. Mazurie*, 419 U.S. 544, 550 (1975)). Where as here a defendant challenges a statute for vagueness under the Due Process Clause, the challenge "rest[s] on the lack of notice, and hence may be overcome in any specific case where reasonable persons would know that their conduct is at risk." *Maynard v. Cartwright*, 486 U.S. 356, 361 (1988). "Thus, in a due process vagueness case, we will hold that a law is facially invalid only if the enactment is impermissibly vague in *all* of its applications."

Johnson v. United States, 135 S. Ct. at 2580 (quoting *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494-95 (1982)).

We hold that 8 U.S.C. § 1101(f)(6) is not unconstitutionally vague as applied to Maslenjak.[12] That section specifies that "[n]o person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was one who has given false testimony for the purpose of obtaining any benefits under this chapter." 8 U.S.C.A. § 1101(f)(6). The statute defines a series of factors which will preclude a finding of good moral character. The particular factor challenged by Maslenjak defines conduct, giving false testimony, and calls for the determination of "clear questions of fact" susceptible to "a true-or-false determination, not a subjective

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[12] Maslenjak argues in her opening brief that 8 U.S.C. § 1101(f)(9), the statute's catch-all provision, is unconstitutionally vague. That paragraph follows a non-exhaustive list of factors that will preclude a finding of good moral character; the paragraph states as follows: "The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character." 8 U.S.C. § 1101(f)(9).

We need not reach this issue because the district court did not instruct on this theory, and Maslenjak has otherwise failed to demonstrate how this paragraph was "applied" to her. Maslenjak does claim that "[n]othing in the instructions defined 'good moral character' or even limited the methods by which the government could prove that Ms. Maslenjak lacked good moral character." Opening Br. 43. But Maslenjak's claim is belied by what the district court actually stated in its charge to the jury. The district court explained only one means of establishing a lack of good moral character, and that was giving "false testimony for the purpose of obtaining any immigration benefit."

judgment such as whether conduct is 'annoying' or 'indecent.'" *Williams*, 553 U.S. at 306; *see also Dang*, 488 F.3d at 1141 (holding that 8 U.S.C. § 1101(f)(9), the good moral character catch-all provision and its implementing regulation was not unconstitutionally vague as applied in that case). Therefore, we reject Maslenjak's vagueness challenge.

C.

Maslenjak next challenges the district court's instructions to the jury about what the government had to prove to show that Maslenjak had given false testimony for the purpose of procuring an immigration benefit and how her false testimony meant she did not meet the INA's good moral character requirement. Specifically, Maslenjak argues that the district court failed to explain that "testimony" under § 1101(f)(6) had to be an oral statement or that Maslenjak had to give false testimony with the specific intent to obtain an immigration benefit. The Supreme Court in *Kungys* carefully construed § 1101(f)(6) and concluded that the false testimony described in the statute need not be material in order to find that a person lacked good moral character. In explaining why its "literal reading of the statute does not produce draconian results," the *Kungys* court first noted that "'testimony' is limited to oral statements made under oath" and does not include "other types of misrepresentations or concealments, such as falsified documents or statements not made under oath." *Kungys*, 485 U.S. at 780 (citations omitted). Whether a statement or misrepresentation qualifies as "testimony" is a question of law. *Id.* at 782. The Supreme Court also explained that its literal reading of § 1101(f)(6) did not produce unduly harsh results because that section "applies to only those

misrepresentations made with the subjective intent of obtaining immigration benefits" and not "misrepresentations made for other reasons, such as embarrassment, fear, or a desire for privacy, ..." *Id.* at 780. Whether the applicant acted with the required intent is, of course, a question of fact for the jury. *Id.* at 782.

We hold that the district court did not abuse its discretion because the instructions, taken as a whole, accurately reflected the law. *Ross*, 502 F.3d at 527. With respect to the instructions about the necessary intent, the jury charge clearly stated that "[g]iving false testimony for the purpose of obtaining any immigration benefit precludes someone from being regarded as having good moral character," which in turn means "the applicant is not entitled to naturalization." ECF 62, Jury Instr., Page ID 1121. This instruction is a clear and accurate statement of law. Therefore, no abuse of discretion occurred.

As for the instruction about "false testimony," the district court did not define "testimony" to limit the term to oral statements and did not instruct the jury which of Maslenjak's statements constituted "testimony." More fundamentally, the district court did not recognize that the issue of whether any of Maslenjak's statements even met the legal definition of "testimony" under 8 U.S.C. § 1101(f)(6) was a question of law. The instruction as given did not address any of these aspects of the "false testimony" element, as the Supreme Court described it in *Kungys*. Nevertheless, when viewed as a whole, it cannot be said that the jury instructions were "confusing, misleading, or prejudicial." *Richardson*, 793 F.3d at 629.

And even if the district court's instruction about "testimony" was erroneous, the error was harmless. The harmless-error standard applies "to cases involving improper instructions on a single element of the offense." *Neder v. United States*, 527 U.S. 1, 9 (1999); *Richardson*, 793 F.3d 612, 631 ("[A] jury instruction that misdescribes or omits an element of an offense is subject to harmless error review.") (citation omitted). Any error regarding the jury instruction on the single element of "false testimony" was harmless in this case. The record is replete with oral statements made by Maslenjak under oath during her interviews with immigration officials, which meet the legal definition of "testimony." Perhaps more importantly, the evidence the jury heard does not include any other proof "that could rationally lead to a contrary finding with respect to the omitted element." *Richardson*, 793 F.3d at 632 (quoting *Neder*, 527 U.S. at 19). Therefore, any error in the jury instructions was harmless.

IV.

For the reasons stated here, we AFFIRM the judgment of the district court.

CONCURRENCE

JULIA SMITH GIBBONS, concurring. I concur with some reluctance in the lead opinion's carefully-reasoned analysis. Initially, I was not inclined to differ from our sister circuits' interpretation of 18 U.S.C. § 1425(a), but this analysis has persuaded me that the view most faithful to the statute is that materiality is not an element of the § 1425(a) offense.

I am uncertain what goal Congress intended to further by omitting materiality from the elements of § 1425(a). I have located no other federal criminal statute that punishes a defendant for an immaterial false statement. Nor have I located any analogous context in which the elements of a crime are less onerous than the elements of the related civil penalty proceeding.

Finally, I echo a point made in the lead opinion but put it more bluntly. The government's inconsistency in this case and on this issue is puzzling and indeed inappropriate. This is particularly so because the government, in response to questioning at oral argument, was unable to articulate any interest of the United States in prosecuting statements that are immaterial.

For all these reasons, our result here is troublesome. Yet we are not free to select our own notion of the best result in a case but instead are guided by what the law requires. That principle trumps any reluctance about joining the lead opinion.

FILED
May 27, 2016
Deborah S. Hunt
Clerk

No. 14-3864

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DIVNA MASLENJAK,

Defendant-Appellant.

ORDER

BEFORE: GIBBONS and McKEAGUE, Circuit Judges; and ANDERSON, District Judge.*

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

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* The Honorable S. Thomas Anderson, United States District Judge for the Western District of Tennessee, sitting by designation.

FILED
2013 MAR 5
PM 5:03
U S District
Court Northern
District of Ohio
Cleveland

Case No. 1:13cr126
Title 18, Sections 1425(a) and 1423, United States Code

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DIVNA MASLENJAK,

Defendant.

JUDGE BENITA Y. PEARSON

INDICTMENT

COUNT 1

The Grand Jury charges:

On or about August 3,2007, in the Northern District of Ohio, Eastern Division, DIVNA MASLENJAK, while a citizen of Bosnia Herzegovina, and an alien, did knowingly procure, contrary to law, her naturalization, to wit: DIVNA MASLENJAK made material false statements on a Form N-400 Application for Naturalization by answering "no" to question No. 23 which asked whether the applicant had "knowingly given false or misleading information to any U.S. government official while applying for any immigration benefit or to prevent deportation, exclusion or removal" and by answering "no" to question No. 24 which asked whether the applicant had "ever lied to any U.S. government official to gain entry or admission into the

United States" and answering the same during her interview for naturalization when DIVNA MASLENJAK then well knew that she had lied to government officials when applying for her refugee status and her lawful permanent residence status and thereby gained admission into the United States, in violation of Title 18, Section 1425(a), United States Code

COUNT 2

The Grand Jury further charges:

On or about February 6, 2009, in the Northern District of Ohio, Eastern Division, DIVNA MASLENJAK, did knowingly use an unlawfully issued certificate of naturalization for the purpose of filing a Form I-130 Petition for Alien Relative to assist her husband in securing his lawful permanent resident status based upon their marriage, said certificate of naturalization having been obtained contrary to law by DIVNA MASLENJAK's material false statements made during the application process for naturalization, in violation of Title 18, Section 1423, United States Code.

A TRUE BILL.

Original document-Signatures on file with the Clerk of Courts, pursuant to the E-Govemment Act of 2002.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

DIVNA MASLENJAK,
Defendant.

Case No. 1:13-cr-126
Youngstown, Ohio
Tuesday, April 15, 2014
8:50 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE
BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

JURY TRIAL

* * *

(Jury in at 9:03 a.m.)

THE CLERK: The matter before the court is Case Number 1:13-cr-126, the United States of America versus Divna Maslenjak.

THE COURT: Good morning, everyone. You may take your seats. Welcome back, Jurors.

Jurors, in a moment, you will hear opening statements. The government will go first. Ms. Maslenjak's counsel will go next.

After the completion of opening statements, you will begin to hear evidence from witness testimony, and defense counsel may cross-examine any one of the government's witnesses.

For the United States, are you ready, sir?

[Government counsel]: We are, Your Honor.

THE COURT: You may proceed.

[Government counsel]: Thank you.

Good morning.

JURORS: Good morning.

[Government counsel]: What you see before you is a Certificate of United States Citizenship. And it's more than a piece of paper. It represents all the rights, privileges and responsibilities of U.S. citizenship. And for the millions of people who weren't born in this country, but who long to be a United States citizen, this is the goal. And our country doesn't just give these away; you have to earn them. You have to be in the country legally, you have to follow the rules and you have to tell the truth.

And the problem, as the evidence will show, with the defendant's claim to U.S. citizenship is that it was built on a foundation of lies. And that foundation crumbled when the defendant admitted under oath that the story that she told to come to the United States as a war refugee from Bosnia just wasn't true.

Ladies and gentlemen of the jury, my name is Adam Hollingsworth, and I represent the United States of America, along with my co-counsel, Phil Tripi. And seated with us today at counsel table is Senior Special Agent Tom Guastini.

The evidence that you are about to hear will show that the defendant's claim to U.S. citizenship was built on a foundation of lies. And what were they?

The first one was that during the Bosnian War, from 1992 to 1997, she was separated from her husband. That she—that she was in Bratunac, in Bosnia, right there (indicating), and that her husband was forced to hide out in Serbia for five years to avoid serving in the military.

That's the story that she told the United States Government. That from 1992 to 1997, they lived in two separate countries, separated by a war zone, so that her husband could avoid being forced to fight in the war in Bosnia.

What was the second lie? The evidence will show that as the basis for defendant's refugee status, for her request to the United States Government to open up its arms and protect her from persecution, that she was afraid of returning to her home country because her husband didn't fight, that she wouldn't be welcome back, that she and her husband would be persecuted because he didn't fight. That was the basis for her refugee claim.

And through the testimony and evidence and documents that you are about to see, you will learn that her husband, in fact, was not in Serbia hiding out, but was fighting in Bosnia from 1992 to 1995, that he was a supervisory officer in their military during the Bosnian War.

* * *

DIRECT EXAMINATION OF TODD E. GARDNER

BY [Government counsel]:

Q. Good morning. Mr. Gardner, could you please state your name for the record and please spell the last name?

A. Yes. My name is Todd E. Gardner. And Gardner is G-a-r-d-n-e-r.

Q. Can you tell us a little bit about your current position?

A. I'm currently an adjudication officer with the Department of Homeland Security, United States Citizenship and Immigration Services.

Q. Do you have any special area that you're concentrating on at this point in time?

A. Right now I am the lead representative for one of the directorates, the Refugee, Asylum, and International Operations Directorate, and I am representing this directorate in our Modernization Project.

* * *

BY [Government counsel]:

Q. Sir, is this the document you were asked—one of the documents you were asked to review?

A. Yes, it is.

Q. Can you identify what document that is, please?

A. Yes. This is a—what's called a Registration for Classification as a Refugee. It's also known as the I-590. And it is the main application form for refugee status.

* * *

Q. Okay. Mr. Gardner, I want to talk generally about the types of information that are required to be filled out on these applications and the significance for requesting that information on the part of the United States.

There's some biographical at the beginning; is that correct?

A. Yes, there is. There's such things as name, address, dates of birth, place of birth, et cetera.

Q. All right. Referring you specifically to Question Number 5 and the short answer that's in there, I believe you had earlier testified that sometimes they incorporate another document.

Can you tell us—can you identify when they ask for "Reasons (State in detail)," what is that actually requesting of the applicant?

A. What they're asking, it assumes the first—the couple of questions before it, "Country from which I fled," "On or about," and when they say "Reasons," they mean "Why did you flee that country?" So they would want a narrative answer as to the reasons why you felt compelled to flee your country.

Q. And you had indicated earlier that oftentimes they take advantage of incorporating another document. Did they do that in this particular case; or Divna Maslenjak, does it indicate that she did that in this particular case?

A. In this particular case, what the caseworker, the Refugee Service Center caseworker entered, is to see the IOM bio.

Q. All right. And the IOM bio would be what type of a document, if you can tell us?

A. The IOM bio was a document produced by the Refugee Service Center. In this case, it was IOM, or International Organization for Migration, who was the contractor. And they would produce a document, their own document. It's—I believe it's a case summary sheet. It was part of their information—information gathering to assist the applicant to fill out the I-590.

Q. Showing you what's been marked for purposes of identification as Government Exhibit 26.

Can you tell us, do you recognize that document?

* * *

Q. Was this part of the documents you were asked to review, sir?

A. Yes, it is.

Q. And when we refer on the first page to "See IOM bio," would this qualify as that document that would be contained in Ms. Maslenjak's alien file?

A. Yes, this is the document that would be the one referred to.

Q. And did this document—without going into details, would this document have provided the basis for the refugee claim?

A. This would have provided a basis for the refugee claim. There is also the interview, and that also forms a basis.

* * *

DIRECT EXAMINATION OF MONICA RAHMEYER

BY [Government counsel]:

Q. Good afternoon.

A. Good afternoon.

Q. Could you please state your name, speaking loudly into the microphone, and spell your last name for the court reporter?

A. Yes. My name is Monica Rahmeyer. It's M-o-n-i-c-a, R-a-h-m-e-y-e-r.

Q. Where do you work?

A. I currently work with USCIS, that's U.S. Citizenship and Immigration Services, as the administrative appeals officer.

Q. How long have you worked for USCIS?

A. I started in March of '95.

* * *

Q. So, could you please walk the members of the jury through your work history, beginning when you first started with UCIS—USCIS?

A. Yes. I began as an asylum officer, again, in March of '95. I worked as an asylum officer for several years, probably about four. After that, I became a quality assurance training coordinator with the asylum office as well. It was a promotion. That was for about two years.

After that I became a supervisory asylum officer. And then I worked as a trial attorney for USCIS. And then I began as an administrative appeals officer. So I work for the Administrative Appeals Office as an appeals officer.

Q. When you became a supervisory asylum officer, did you have individuals working underneath you?

A. Yes. I had about five officers that I oversaw.

Q. And what was your role in overseeing them?

A. Basically, they would write decisions. They would do the interviews of the people that were applying for asylum. Sometimes I would monitor the interviews to make sure that they were doing legally sufficient and factually explicit interviews.

And I would review all of the decisions that they wrote and make sure that they met all of the guidelines that we needed them to meet for a proper and sufficient decision.

Q. Would you have to approve their decision about whether or not to grant someone asylum?

A. Yes. I was the final signatory on the decisions.

Q. At some point in your experience, were you stationed overseas to perform your duties?

A. Yes, I was. When I was working as an asylum officer, I had a few occasions that I was able to work overseas doing refugee processing.

Q. Where were you located?

A. The first time I went overseas, I went to Croatia, and I was interviewing refugees from the Bosnian—there was the Bosnia-Herzegovina War Conflict. That was during the '90s. And I did interview the refugees that were of Croatian ethnicity in Croatia.

Q. Any other times that you worked overseas?

A. Yes. I did an overseas processing detail in Frankfurt, Germany. That was approximately 60 days. And the first half of that detail I worked in Frankfurt. Again, it was doing refugees from the Bosnia-Herzegovina Conflict. The people in Germany tended to be people that were Muslims, or maybe involved in mixed marriages between different ethnicities.

And then the other half of that time I spent in Yugoslavia, in Belgrade.

* * *

Q. I'd like to turn your attention to your specific overseas assignment in Belgrade, Serbia.

A. All right.

Q. When did you arrive in Belgrade?

A. In Belgrade, it was in the—it was in the spring of '98. I—yeah.

Q. What was it—

A. I'm not sure. It was somewhere between March and August—and April.

Q. In 1998?

A. '98.

Q. What was a typical day like for you when you were in Belgrade?

A. In Belgrade, we were interviewing up to ten families a day, and they were always interviewed as family units. These were pretty much always ethnic Serbs that had been living in Bosnia and they were—for whatever reason, they were not—they were basically forced out of Bosnia, from their—from their place they lived because of ethnic cleansing. And so we would interview those families.

* * *

Q. You mentioned that oftentimes you would interview families as a unit.

A. Correct.

Q. In situations like that, how would you conduct the interview?

A. Well, I mean, they would all be put under oath, and I would explain the process of the interview to everyone. And, basically, I would try to make everyone understand that they're all a part of this interview.

We have a principal applicant for the interview, and that is the person that the—that's the basis of the—of being eligible to apply under the program is based on.

But I also wanted to hear if anybody else had a claim, or if there were any other things that people had to say about what happened to them specifically, whether they agreed with everything, just make sure that everybody was in line with the story that was being given.

Q. Who would you begin with when conducting interviews?

A. I would begin with the principal applicant. Again, that was the person that everything kind of hinged on. Because if the principal applicant did not satisfy the definition of a refugee, then it didn't really matter that the other—if somebody else had been persecuted or had a well-founded fear. If the principal applicant didn't, they weren't really going to go under this program, unless they had their own family relationship.

Q. Did you ever observe disagreements or differences between the testimony of a principal applicant and a derivative applicant while conducting an interview?

A. I did not, actually.

Q. In your experience, the testimony and stories of principal applicants and derivative applicants were always the same?

A. That's—yeah, in my experience.

Q. Turning your attention to the specific interview that you did on April 22nd, 1998. I'd like to draw your attention to Government's Exhibit 24-1.

A. Okay. So I'll look in this book?

Q. It will also come up on the screen in front of you.

A. Okay.

THE COURT: This has already been shown to the jury. Mr. Cahoon, do you agree with that?

MR. CAHOON [Defense counsel]: I do, Your Honor.

THE COURT: And I think this was one you did not have an objection to at that time?

[Defense counsel]: That's correct, Your Honor.

THE COURT: I am going to allow it to be published now, unless you choose otherwise, Mr. Hollingsworth.

[Government counsel]: I would prefer it to be published, Your Honor. Thank you.

THE COURT: It's published.

[Government counsel]: Thank you.

BY [Government counsel]:

Q. What is Government's Exhibit 24?

A. All right. So this is what is called a Form I-590, and it's the Registration for Classification as a Refugee.

Q. And have you seen this particular I-590 before?

A. Yes, I have.

Q. When?

A. Well, in going over—in preparing for the application—or for this—for this hearing, I looked at the applications.

And also, I know that I did this because I have my signature on it, on the second page.

Q. So when was the first time you saw this document?

A. Well, the first time would have been when I did the interview.

Q. And you testified earlier that when you prepared for an interview, you looked to the I-590 as the basis for the claim, correct?

A. That's right. When I prepare it, I would look at the I-590, just to get an understanding of what the claim was about, and just to kind of set up my interview, make sure that if there were any issues that sort of stood out on the I-590, that I made sure that I covered them.

Q. And turning your attention to Questions 4 and 5 on this I-590, what did you learn while you were preparing for your interview?

A. Well, I learned, basically, you know, the country that the applicant was from, and also that they went—it says, "On or about (year/day)." That's kind of out of context actually right now.

Q. So, if I may interrupt. I believe if you read Question 4 across, it provides more context.

A. That's correct. That would be the date that they left—that they left Bosnia.

Q. So in this particular instance, what day did the defendant purport to leave Bosnia?

A. In this instance, it would have been June 25th, 1997.

Q. Okay. And what were the reasons that she gave the United States Government for leaving Bosnia?

A. Well, in this case, it just refers me to an I—another document. It says, "Please see IOM bio."

Q. And was that common, in your experience?

A. It was. Actually, it was the norm. Because, basically, you would have the—the basis—it's talking about the reasons that they left Bosnia.

And so this space that was given was so small, that often they would just—it would be typed up on a separate document so that it, first of all, was legible, and second of all, you could put more information.

Q. And we're going to get to that IOM bio sheet in one second.

But I'd like to turn your attention to Government's Exhibit 24-2, the signature block.

Were you instructed to have every applicant sign their I-590?

A. Yes, I was.

[Government counsel]: And if we could zoom in on the signature block itself.

BY [Government counsel]:

Q. What exactly were they swearing and affirming to?

A. Well, they were swearing that the information in the I-590, including the summary, the case summary, was true and complete information to the best of their knowledge.

Q. And you know that they were swearing to the accuracy of the attachment as well, because in the signature block, it specifically refers to any attachments, correct?

A. That's correct. And even during—when I give my introduction, I would tell them, "Look, if we need to make any changes or corrections, I will make those changes on the application or on the document, the summary as well, and I will number any changes or corrections." And that allows here for any corrections to be numbered. And I would have gone over that.

If there had been any corrections, I would have numbered them and said, "Okay, you agree with these corrections and the information on the corrections," and that would have been signed as well, that they agreed.

Q. So turning your attention to that attached document, Government's Exhibit 26.

When you were preparing for the interview, what did you learn was the basis for the defendant's claim for refugee status?

A. In this particular case, their basis was that they—because they were ethnic Serbs, they had been forced to flee their home—the place that they lived in Bosnia, and that they were not able to go back because they feared, basically, for their life, which was plausible.

And that the wife mentioned that she had gone—well, first they had all gone to Serbia, or Yugoslavia it's actually called. And then the wife and the children had gone back to Bosnia, but a different part that was Serb held; but the husband did not return, because he was afraid that he would be forced to serve in the

Republic Serbian military if he went back to that part of Bosnia.

Q. So drawing your attention to the specific statements contained in the last three paragraphs of Government Exhibit 26, walk us through the chronology of the defendant's movements beginning in August of 1992.

* * *

THE WITNESS: Well, basically, this is where the applicant and her husband are saying that the reason that they left their home

* * *

THE WITNESS: Okay. So this would be their home in Bosnia, which they said that they were threatened and forced to leave because of their ethnicity, because, basically, it was taken over by—well, it doesn't say there, but they said in the interview it was because Muslims forced them out.

And that she then—well, they went together to Serbia, and then she and the children went to Bratunac, in the Serbian part of Bosnia-Herzegovina. She stayed there because there were no living conditions in Serbia for them, but the husband did not. He went—he stayed in Serbia, because he did not want to be mobilized by the Serb Army.

And then in June of '97, so five years later, she would have gone back and joined her husband in Serbia.

BY [Government counsel]:

Q. And then the last sentence of Exhibit 26 encapsulates their fear of returning, correct?

A. Correct. That would be their fear that they would be mistreated on account of their ethnicity if they returned back to their home.

Q. So you prepared—or you reviewed all of this in preparation for interviewing the defendant and her husband, correct?

A. That's absolutely true.

Q. Okay. When did you interview the defendant?

A. This defendant was interviewed in April of 1998.

Q. And where were you when the interview happened?

A. I was in Belgrade, in Yugoslavia.

* * *

Q. What questions did you ask the defendant during that interview?

A. Well, after putting them under oath, I would start with the principal applicant, and, basically, I started out kind of saying, you know, "Well, what was the reason that you left your country," and just kind of see where the questions go.

But, basically, I was asking her why did she leave her country, her home, you know, what was it that happened there, what were her reasons for not wanting to return.

Q. And what did she tell you?

A. She told me—it was consistent with what I just read from this statement. Basically, it was the same testimony, in fact, that she had left because they were threatened by the ethnic Muslims, and that people were shooting at their home, that they were—they were told to leave or else they would be harmed, so

that they did flee in, I think it was August of '92, as a family, they fled, and that they couldn't go back because they feared that they would be harmed, that these threats would be carried out.

Q. Did she tell you that she was separated from her husband for those five years?

A. She did. That was part of her testimony, that they went together to Serbia, but that she and her children went back to the Serb part of Bosnia; so not their home, but a different part of Bosnia. And she was there—I think she had family members in that part of Bosnia, and she was there with her children for five years while her husband was outside of the country in Serbia, because he didn't dare go back. He feared that he would be mobilized into the Serb's military, which actually was committing atrocities itself.

Q. And did you ask her why she didn't want to return to her home country?

A. Yes, I did.

Q. And—

A. That was part of the—

Q. I'm sorry. And what did she tell you?

A. She said her fear was that they would be mistreated and harmed if they went back to their home country.

Q. And why did she fear that they would be mistreated and harmed?

A. Based on her ethnicity. And also, she didn't want—they didn't feel that the husband could go back to the part that she had been living in, because he hadn't served in the military for the Serb Republic part

of Bosnia, and that he would be harmed based on that as well.

Q. At any time during your interview of the defendant, did she tell you that her husband had served in the Army of the Republika Srpska?

A. No. In fact, they stated that he had not served in the Serb's military, because he had been outside of the country that whole time.

* * *

Q. Based upon your training and experience and policies, if someone had informed you that they had participated in the Republika Srpska military, what steps would you have taken in that interview?

* * *

THE WITNESS: All right. Well, I would have gone to what we call a—I call a question/answer format.

So, because this raised the possibility that there might have been—that he may have been a persecutor if he had been in that army, because they were involved in activities that were persecution as well, so I would have started a whole other sort of sub-interview.

I would have been interviewing him within that interview specifically, and I would have asked him questions. I would have written out the questions. I would have written out his answers.

And I would have asked things like, you know, "So when did you serve?" You know, "What was your position, or what was your rank when you served? Where did you serve? What activities were you involved in? Who did you serve under? How long did you serve?"

All those questions to get at, what was he involved in? Was he involved in any of these human rights abuses that have been documented in different country conditions?

BY [Government Counsel]:

Q. And in your review of the file, did you at any point ask any of those questions?

A. I did not.

* * *

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0087

Registration for Classification as Refugee

Type or print the following information. (Read instructions on reverse)

A File No.: 75 042 794

1. Name: (First) DIVNA (Middle) (Last) HAPLENJAK

2. Present address: NJEGOSEVA 27, JAGODINA, FRY

3. Date of birth (month/day/year): [redacted] Place of birth (city or town): ZENICA (Province): (Country): BIH Present nationality: BOSNIAN

4. Country from which I fled or was displaced: BOSNIA On or about (month/day/year): 25/JUN/97

5. Reasons (State in detail): Please see ION Pro

6. My present immigration status in FRY (country in which residing) is: refugee

Evidence of my immigration status is: ref. ID card: 7104802500 (Describe)

GOVERNMENT EXHIBIT 24 1:13CR126

7. Name of spouse:	8. Present address of spouse (if different):	9. Nationality of spouse:
RATKO HAPLENJAK	same as above	BOSNIAN

10. My spouse ☒ will ☐ will not accompany me to the United States

11. Name of child (ren)	Date of birth	Place of birth	Present address (if different)
* DANIJELA HAPLENJAK	[redacted]	ZENICA, BIH	same as above
* BOJAN HAPLENJAK		↓	↓

Place a mark (*) in front of name of each child who will accompany you to the United States

12. Schooling or education

Name and location of school	Type	Dates attended	Title of degree or diploma
THIRD COURSE, ZENICA, BIH	High	1979-1980	Typist
ELEMENTARY SCHOOL, ZENICA, BIH	Elementary	1969-1977	Elementary school degree

13. Military service

Country	Branch and organization	Dates	Serial No.	Rank attained
N/A				

Form I-590 (Rev. 11-13-92)Y

Gov Ex 24-1

NOV 22 '00 -7 22 AM 14 34

6128

14. Political, professional or social organizations of which I am now or have been a member or with which I am now or have been affiliated since my 16th birthday (If you have never been a member of any organization, state "None.")

NONE

15. I ☐ have ☒ have not been charged with a violation of law. (If you have ever been charged with a violation of law, give date, place and nature of each charge and the final result.)

16. I ☐ have ☒ have not been in the United States. (If you have ever been in the United States, show the dates of entry and departure and the purpose of your entry (visitor, permanent resident, student, seaman, etc.).

File or Alien Registration Number:

17. I have the following close relatives in the United States:

Name	Relationship	Present address
[illegible]	sister	247 Lilac Pl. Bourbonton, Ohio 44203
[illegible]	sister	263 Lilac Pl. Bourbonton, Ohio 44203

18. I am being sponsored by (Name and address of United States sponsor):

Date: 30 MAY 98

Signature of registrant: Masleniak Divac

DO NOT WRITE BELOW THIS LINE

I, _____, do swear (affirm) that I know the contents of this registration subscribed by me including the attached documents, that the same are true to the best of my knowledge, and that corrections numbered ( ) to ( ) were made by me or at my request, and that this registration was signed by me with my full, true name:

* Masleniak Divac
(Complete and true signature of registrant)

Subscribed and sworn to before me by the above-named registrant at BELGRADE on 22-OCT-1998
(month/day/year)

(Signature and title of officer)

INTERVIEW NONE

DATE

AT BELGRADE

Immigration Officer

APPROVED

DATE OCT 9 - 1998

Officer in Charge

RE-1

INSTRUCTIONS

This form should be executed, signed and submitted to the Officer in Charge of the nearest overseas office of the United States Immigration and Naturalization Service. When your name has been reached as a registrant you will be furnished additional instructions.

Registration - A seperate Registration Form must be executed by each registrant and submitted in one copy. A Registration Form in behalf of a child under 14 years of age shall be executed by the parent of guardian.

Public reporting burden for this collection of information is estimated to average 35 minutes per response. If you have comments regarding the accuracy of this estimate or suggestions for simplifying this form, you can write to both the U.S. Department of Justice, Immigration and Naturalization Service Policy Directives and Instructions Branch (HQPDI8), Washington, D.C. 20536 and to the Office of Management and Budget, Paperwork Reduction Project. OMB No. 1115-0057, Washington, D.C. 20503.

IOM CASE SUMMARY SHEET

IOM Case Number: 98/B/0613 (4) MASLENJAK, Divna
(DOB: [redacted]62; Sex: F)

Case appears eligible under P4 (family reunification), as PA is a Bosnian Serb and has two sisters in the U.S. (both resettled through IOM Belgrade office, SR - 010923 and SR - 331703). File attached for reference. AOR original from one sister on file. PA's mother and brother also applied for resettlement: IOM Number 98/B/0096.

Relatives of PA (included in case):

NAME	DOB	SEX	RELATION TO PA
MASLENJAK, Ratko	[redacted]59	M	HU
M[redacted] D[redacted]	[redacted]82	F	DA
M[redacted] D[redacted]	[redacted]88	M	SO

CASE NOTES

PA and HU were both born and raised in the village of Svice, near Zenica, BH. Prior to the war, they were living in their family house in the village with their two children. PA and HU were both employed in the local forge, PA as a typist and HU as an electrician. They say in Apr 92, they were laid of at their work place on account of their ethnicity. When the broke out Muslims, the majority of the population, took control of the area where they lived.

PA and HU's home village was predominantly populated by the Serbs. PA says since early 1992, they received phone (death and expulsion) threats on a daily basis. They say in Jun 92, Muslim soldiers searched their house, looking for weapons. The soldiers insulted and provoked PA and family on account of their ethnicity. PA says the soldiers shot around their house a lot so as to scare them away.

PA and HU say a lot of people began leaving the village, so in Aug 92, PA and family left, when a Croat soldier transferred them out and took their car for the favor. The family came straight to FRY and settled with relatives.

Not having any conditions for living in FRY, PA and children went to Bratunac, Serb held part of BH, where PA was given accommodation by a friend and began living with her mother, brother and two sisters (now in U.S.). She occasionally visited HU in FRY, who did not dare go BH so as not to be mobilized by the Serb Army. In Jun 97, PA and children joined HU in FRY.

PA and family are registered refugees in FRY. They see no prospects for local integration on account of their refugee status. They fear maltreatment on account of their ethnicity if they return to their home village.

Gordana Sokic
IOM Case Worker
30 January, 1998

OMB No. 1615-0052

Department of Homeland Security
U.S Citizenship and Immigration Services

N-400 Application for Naturalization

Print clearly or type your answers using CAPITAL letters. Failure to print clearly may delay your application. Use black ink.

Part 1. Your Name. *(The Person Applying for Naturalization)*

Write your USCIS "A"- number here:
A [redacted]794

A. Your current legal name.

Family Name *(Last Name)*: MASLENJAK

Given Name *(First Name)*: DIVNA

Full Middle Name *(If applicable)*: -

B. Your name **exactly** as it appears on your Permanent Resident Card.

Family Name *(Last Name)*: MASLENJAK

Given Name *(First Name)*: DIVNA

Full Middle Name *(If applicable)*: -

C. If you have ever used other names, provide them below.

Family Name *(Last Name)*	Given Name *(First Name)*	Middle Name

D. Name change *(optional)*

Please read the Instructions before you decide whether to change your name.

1. Would you like to legally change your name? ☐ Yes ☒ No
2. If "Yes," print the new name you would like to use. Do not use initials or abbreviations when writing your new name.

Family Name *(Last Name)*:

Given Name *(First Name)*:

Full Middle Name:

For USCIS Use Only

Bar Code | Date Stamp

Remarks

[redacted] LIN-06120960 LIN0609453B1 01/12/2007

Action Block

Part 2. Information About Your Eligibility. *(Check Only One)*

I am at least 18 years old **AND**

A. ☒ I have been a Lawful Permanent Resident of the United States for at least five years.

B. ☐ I have been a Lawful Permanent Resident of the United States for at least three years, **and** I have been married to and living with the same U.S. citizen for the last three years, **and** my spouse has been a U.S. citizen for the last three years.

C. ☐ I am applying on the basis of qualifying military service.

D. ☐ Other *(Please explain)* _____

Part 3. Information About You.

Write your USCIS "A"- number here: A [redacted]794

A. U.S. Social Security Number: [redacted]3722

B. Date of Birth *(mm/dd/yyyy)*: [redacted]1962

C. Date You Became a Permanent Resident *(mm/dd/yyyy)*: 09-28-2000

D. Country of Birth: BOSNIA & HERCEGOVINA-YUGOSLAVIA

E. Country of Nationality: [redacted]

F. Are either of your parents U.S. citizens? *(If yes, see Instructions)* ☐ Yes ☒ No

G. What is your current marital status? ☐ Single, Never Married ☒ Married ☐ Divorced ☐ Widowed

☐ Marriage Annulled or Other *(Explain)* _____

H. Are you requesting a waiver of the English and/or U.S. History and Government requirements based on a disability or impairment and attaching a Form N-648 with your application? ☐ Yes ☒ No

I. Are you requesting an accommodation to the naturalization process because of a disability or impairment? *(See Instructions for some examples of accommodations.)* ☐ Yes ☒ No

If you answered "Yes," check the box below that applies:

☐ I am deaf or hearing impaired and need a sign language interpreter who uses the following language: _____

☐ I use a wheelchair.

☐ I am blind or sight impaired.

☐ I will need another type of accommodation. Please explain: _____

Part 4. Addresses and Telephone Numbers.

A. Home Address - Street Number and Name *(Do not write a P.O. Box in this space)*: [redacted]

Apartment Number:

City	County	State	ZIP Code	Country
AKRON	SUMMIT	OH	44312	US

B. Care of:

Mailing Address - Street Number and Name *(If different from home address)*:

Apartment Number:

City	State	ZIP Code	Country

C. Daytime Phone Number *(If any)*: (330) 733-0005

Evening Phone Number *(If any)*: ( )

E-mail Address *(If any)*:

656a

Part 5. Information for Criminal Records Search.

Write your USCIS "A"- number here: A [redacted]794

NOTE: The categories below are those req[illegible]d by the FBI. See Instructions for more information.

A. Gender
☐ Male ☒ Female

B. Height
5 Feet 4 Inches

C. Weight
170 Pounds

D. Are you Hispanic or Latino?
☐ Yes ☒ No

E. Race *(Select one or more.)*
☒ White ☐ Asian ☐ Black or African American ☐ American Indian or Alaskan Native ☐ Native Hawaiian or Other Pacific Islander

F. Hair color
☐ Black ☒ Brown ☐ Blonde ☐ Gray ☐ White ☐ Red ☐ Sandy ☐ Bald (No Hair)

G. Eye color
☐ Brown ☒ Blue ☐ Green ☐ Hazel ☐ Gray ☐ Black ☐ Pink ☐ Maroon ☐ Other

Part 6. Information About Your Residence and Employment.

A. Where have you lived during the last five years? Begin with where you live now and then list every place you lived for the last five years. If you need more space, use a separate sheet(s) of paper.

Street Number and Name, Apartment Number, City, State, Zip Code and Country	Dates *(mm/dd/yyyy)* From	To
Current Home Address - Same as Part 4.A	12-18-2002	Present
[redacted] BARBERTON, OH 44203 US	09-28-2000	12-18-2002

B. Where have you worked (or, if you were a student, what schools did you attend) during the last five years? Include military service. Begin with your current or latest employer and then list every place you have worked or studied for the last five years. If you need more space, use a separate sheet of paper.

Employer or School Name	Employer or School Address *(Street, City and State)*	Dates *(mm/dd/yyyy)* From	To	Your Occupation
MILICH'S VILLAGE INN	4444 S. CLEVELAND-MASSILLON RD. BARBERTON, OH 44203	10-23-2001	PRESENT	COOK

Part 7. Time Outside the United States.
(Including Trips to Canada, Mexico and the Caribbean Islands)

Write your USCIS "A" number here: A [redacted] 794

A. How many total days did you spend outside of the United States during the past five years? [ ] days

B. How many trips of 24 hours or more have you taken outside of the United States during the past five years? 3 trips

C. List below all the trips of 24 hours or more that you have taken outside of the United States since becoming a Lawful Permanent Resident. Begin with your most recent trip. If you need more space, use a separate sheet(s) of paper.

Date You Left the United States *(mm/dd/yyyy)*	Date You Returned to the United States *(mm/dd/yyyy)*	Did Trip Last Six Months or More?	Countries to Which You Traveled	Total Days Out of the United States
		☐ Yes ☐ No		
		☐ Yes ☐ No		
		☐ Yes ☐ No		
		☐ Yes ☐ No		
		☐ Yes ☐ No		
		☐ Yes ☐ No		
		☐ Yes ☐ No		
		☐ Yes ☐ No		
		☐ Yes ☐ No		
		☐ Yes ☐ No		

Part 8. Information About Your Marital History.

A. How many times have you been married (including annulled marriages)? 1 If you have never been married, go to Part 9.

B. If you are now married, give the following information about your spouse:

1. Spouse's Family Name *(Last Name)*: MASLENJAK
Given Name *(First Name)*: RATKO
Full Middle Name *(If applicable)*: N/A

2. Date of Birth *(mm/dd/yyyy)*: [redacted]1959
3. Date of Marriage *(mm/dd/yyyy)*: 10-04-1981
4. Spouse's U.S. Social Security #: [redacted]2680

5. Home Address - Street Number and Name: [redacted]
Apartment Number:

City: AKRON
State: OH
Zip Code: 44312

Part 8. Information About Your Marital History. *(Continued)*

Write your USCIS "A"- number here: A [redacted]794

C. Is your spouse a U.S. citizen? ☐ Yes ☒ No

D. If your spouse is a U.S. citizen, give the following information:

1. When did your spouse become a U.S. citizen? ☐ At Birth ☐ Other

If "Other," give the following information:

2. Date your spouse became a U.S. citizen

3. Place your spouse became a U.S. citizen *(Please see Instructions)*

City and State

E. If your spouse is **not** a U.S. citizen, give the following information:

1. Spouse's Country of Citizenship: BOSNIA & HERCEGOVINA

2. Spouse's USCIS "A"- Number *(If applicable)*: A [redacted]795

3. Spouse's Immigration Status: ☒ Lawful Permanent Resident ☐ Other

F. If you were married before, provide the following information about your prior spouse. If you have more than one previous marriage, use a separate sheet(s) of paper to provide the information requested in Questions 1-5 below.

1. Prior Spouse's Family Name *(Last Name)* | Given Name *(First Name)* | Full Middle Name *(If applicable)*

2. Prior Spouse's Immigration Status: ☐ U.S. Citizen ☐ Lawful Permanent Resident ☐ Other

3. Date of Marriage *(mm/dd/yyyy)*

4. Date Marriage Ended *(mm/dd/yyyy)*

5. How Marriage Ended: ☐ Divorce ☐ Spouse Died ☐ Other

G. How many times has your current spouse been married (including annulled marriages)? 1

If your spouse has ever been married before, give the following information about your spouse's prior marriage.
If your spouse has more than one previous marriage, use a separate sheet(s) of paper to provide the information requested in Questions 1 - 5 below.

1. Prior Spouse's Family Name *(Last Name)* | Given Name *(First Name)* | Full Middle Name *(If applicable)*

2. Prior Spouse's Immigration Status: ☐ U.S. Citizen ☐ Lawful Permanent Resident ☐ Other

3. Date of Marriage *(mm/dd/yyyy)*

4. Date Marriage Ended *(mm/dd/yyyy)*

5. How Marriage Ended: ☐ Divorce ☐ Spouse Died ☐ Other

Part 9. Information About Your Children.

Write your USCIS "A"- number here:
A [redacted]794

A. How many sons and daughters have you had? For more information on which sons and daughters you should include and how to complete this section, see the Instructions. **2**

B. Provide the following information about all of your sons and daughters. If you need more space, use a separate sheet(s) of paper.

Full Name of Son or Daughter	Date of Birth (mm/dd/yyyy)	USCIS "A"- number (If child has one)	Country of Birth	Current Address (Street, City, State and Country)
C [redacted] D [redacted]	[redacted]1982	A [redacted]796	BOSNIA & HERCEGOVINA	[redacted] AKRON, OH 44312 US
M [redacted] D [redacted]	[redacted]1988	A [redacted]797	BOSNIA & HERCEGOVINA	[redacted] AKRON, OH 44312 US
		A		
		A		
		A		
		A		
		A		
		A		

Add Children | Go to continuation page

Part 10. Additional Questions.

Please answer Questions 1 through 14. If you answer "Yes" to any of these questions, include a written explanation with this form. Your written explanation should (1) explain why your answer was "Yes" and (2) provide any additional information that helps to explain your answer.

A. General Questions.

1. Have you **ever** claimed to be a U.S. citizen *(in writing or any other way)*? ☐ Yes ☒ No
2. Have you **ever** registered to vote in any Federal, state or local election in the United States? ☐ Yes ☒ No
3. Have you **ever** voted in any Federal, state or local election in the United States? ☐ Yes ☒ No
4. Since becoming a Lawful Permanent Resident, have you **ever** failed to file a required Federal state or local tax return? ☐ Yes ☒ No
5. Do you owe any Federal, state or local taxes that are overdue? ☐ Yes ☒ No
6. Do you have any title of nobility in any foreign country? ☐ Yes ☒ No
7. Have you ever been declared legally incompetent or been confined to a mental institution within the last five years? ☐ Yes ☒ No

Part 10. Additional Questions. (Continued)

Write your USCIS "A"- number here:
A [redacted]794

B. Affiliations.

8. a Have you **ever** been a member of or associated with any organization, association, fund foundation, party, club, society or similar group in the United States or in any other place? ☐ Yes ☒ No

b. If you answered "Yes," list the name of each group below. If you need more space, attach the names of the other group(s) on a separate sheet(s) of paper.

Name of Group	Name of Group
1.	6.
2.	7.
3.	8.
4.	9.
5.	10.

9. Have you **ever** been a member of or in any way associated *(either directly or indirectly)* with:

a. The Communist Party? ☐ Yes ☒ No

b. Any other totalitarian party? ☐ Yes ☒ No

c. A terrorist organization? ☐ Yes ☒ No

10. Have you **ever** advocated *(either directly or indirectly)* the overthrow of any government by force or violence? ☐ Yes ☒ No

11. Have you **ever** persecuted *(either directly or indirectly)* any person because of race, religion, national origin, membership in a particular social group or political opinion? ☐ Yes ☒ No

12. Between March 23, 1933 and May 8, 1945, did you work for or associate in any way *(either directly or indirectly)* with:

a. The Nazi government of Germany? ☐ Yes ☒ No

b. Any government in any area (1) occupied by, (2) allied with, or (3) established with the help of the Nazi government of Germany? ☐ Yes ☒ No

c. Any German, Nazi, or S.S. military unit, paramilitary unit, self-defense unit, vigilante unit, citizen unit, police unit, government agency or office, extermination camp, concentration camp, prisoner of war camp, prison, labor camp or transit camp? ☐ Yes ☒ No

C. Continuous Residence.

Since becoming a Lawful Permanent Resident of the United States:

13. Have you **ever** called yourself a "nonresident" on a Federal, state or local tax return? ☐ Yes ☒ No

14. Have you **ever** failed to file a Federal, state or local tax return because you considered yourself to be a "nonresident"? ☐ Yes ☒ No

Part 10. Additional Questions. (Continued)

Write your USCIS "A"- number here: A [redacted] 794

D. Good Moral Character.

For the purposes of this application, you must answer "Yes" to the following questions, if applicable, even if your records were sealed or otherwise cleared or if anyone, including a judge, law enforcement officer or attorney, told you that you no longer have a record.

15. Have you **ever** committed a crime or offense for which you were **not** arrested? ☐ Yes ☒ No
16. Have you **ever** been arrested, cited or detained by any law enforcement officer (including USCIS or former INS and military officers) for any reason? ☐ Yes ☒ No
17. Have you **ever** been charged with committing any crime or offense? ☐ Yes ☒ No
18. Have you **ever** been convicted of a crime or offense? ☐ Yes ☒ No
19. Have you ever been placed in an alternative sentencing or a rehabilitative program (for example: diversion, deferred prosecution, withheld adjudication, deferred adjudication)? ☐ Yes ☒ No
20. Have you **ever** received a suspended sentence, been placed on probation or been paroled? ☐ Yes ☒ No
21. Have you ever been in jail or prison? ☐ Yes ☒ No

If you answered "Yes" to any of Questions 15 through 21, complete the following table. If you need more space, use a separate sheet (s) of paper to give the same information.

Why were you arrested, cited, detained or charged?	Date arrested, cited, detained or charged? *(mm/dd/yyyy)*	Where were you arrested, cited, detained or charged? *(City, State, Country)*	Outcome or disposition of the arrest, citation, detention or charge *(No charges filed, charges dismissed, jail, probation, etc.)*
1) None to this			

Answer Questions 22 through 33. If you answer "Yes" to any of these questions, attach (1) your written explanation why your answer was "Yes" and (2) any additional information or documentation that helps explain your answer.

22. Have you ever:
    a. Been a habitual drunkard? ☐ Yes ☒ No
    b. Been a prostitute, or procured anyone for prostitution? ☐ Yes ☒ No
    c. Sold or smuggled controlled substances, illegal drugs or narcotics? ☐ Yes ☒ No
    d. Been married to more than one person at the same time? ☐ Yes ☒ No
    e. Helped anyone enter or try to enter the United States illegally? ☐ Yes ☒ No
    f. Gambled illegally or received income from illegal gambling? ☐ Yes ☒ No
    g. Failed to support your dependents or to pay alimony? ☐ Yes ☒ No
23. Have you **ever** given false or misleading information to any U.S. government official while applying for any immigration benefit or to prevent deportation, exclusion or removal? ☐ Yes ☒ No
24. Have you **ever** lied to any U.S. government official to gain entry or admission into the United States? ☐ Yes ☒ No

Part 10. Additional Questions. (Continued)

Write your USCIS "A"- number here: A [redacted] 794

E. Removal, Exclusion and Deportation Proceedings.

25. Are removal, exclusion, rescission or deportation proceedings pending against you? ☐ Yes ☒ No

26. Have you ever been removed, excluded or deported from the United States? ☐ Yes ☒ No

27. Have you ever been ordered to be removed, excluded or deported from the United States? ☐ Yes ☒ No

28. Have you ever applied for any kind of relief from removal, exclusion or deportation? ☐ Yes ☒ No

F. Military Service.

29. Have you ever served in the U.S. Armed Forces? ☐ Yes ☒ No

30. Have you ever left the United States to avoid being drafted into the U.S. Armed Forces? ☐ Yes ☒ No

31. Have you ever applied for any kind of exemption from military service in the U.S. Armed Forces? ☐ Yes ☒ No

32. Have you ever deserted from the U.S. Armed Forces? ☐ Yes ☒ No

G. Selective Service Registration.

33. Are you a male who lived in the United States at any time between your 18th and 26th birthdays in any status except as a lawful nonimmigrant? ☐ Yes ☒ No

If you answered "NO," go on to question 34.

If you answered "YES," provide the information below.

If you answered "YES," but you did not register with the Selective Service System and are still under 26 years of age, you must register before you apply for naturalization, so that you can complete the information below:

Date Registered (mm/dd/yyyy) _____ Selective Service Number _____

If you answered "YES," but you did not register with the Selective Service and you are now 26 years old or older, attach a statement explaining why you did not register.

H. Oath Requirements. *(See Part 14 for the Text of the Oath)*

Answer Questions 34 through 39. If you answer "No" to any of these questions, attach (1) your written explanation why the answer was "No" and (2) any additional information or documentation that helps to explain your answer.

34. Do you support the Constitution and form of government of the United States? ☒ Yes ☐ No

35. Do you understand the full Oath of Allegiance to the United States? ☒ Yes ☐ No

36. Are you willing to take the full Oath of Allegiance to the United States? ☒ Yes ☐ No

37. If the law requires it, are you willing to bear arms on behalf of the United States? ☒ Yes ☐ No

38. If the law requires it, are you willing to perform noncombatant services in the U.S. Armed Forces? ☒ Yes ☐ No

39. If the law requires it, are you willing to perform work of national importance under civilian direction? ☒ Yes ☐ No

Part 11. Your Signature.

Write your USCIS "A" - number here:
A [redacted]794

I certify, under penalty of perjury under the laws of the United States of America, that this application, and the evidence submitted with it, are all true and correct. I authorize the release of any information that the USCIS needs to determine my eligibility for naturalization.

Your Signature: Divna Maslenjak

Date *(mm/dd/yyyy)*: 12-20-2006

Part 12. Signature of Person Who Prepared This Application for You. ***(If Applicable)***

I declare under penalty of perjury that I prepared this application at the request of the above person. The answers provided are based on information of which I have personal knowledge and/or were provided to me by the above named person in response to the *exact questions* contained on this form.

Preparer's Printed Name

Preparer's Signature

Date *(mm/dd/yyyy)*

Preparer's Firm or Organization Name *(If applicable)*

Preparer's Daytime Phone Number

Preparer's Address - Street Number and Name: Div

City

State

Zip Code

NOTE: Do not complete Parts 13 and 14 until a USCIS Officer instructs you to do so.

Part 13. Signature at Interview.

I swear (affirm) and certify under penalty of perjury under the laws of the United States of America that I know that the contents of this application for naturalization subscribed by me, including corrections numbered 1 through [illegible] and the evidence submitted by me numbered pages 1 through [illegible], are true and correct to the best of my knowledge and belief.

Subscribed to and sworn to (affirmed) before me

Officer's Printed Name or Stamp: J.L. [illegible]

Date *(mm/dd/yyyy)*

Complete Signature of Applicant: Divna Maslenjak

Officer's Signature

Part 14. Oath of Allegiance.

If your application is approved, you will be scheduled for a public oath ceremony at which time you will be required to take the following oath of allegiance immediately prior to becoming a naturalized citizen. By signing, you acknowledge your willingness and ability to take this oath:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen;

that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic;

that I will bear true faith and allegiance to the same;

that I will bear arms on behalf of the United States when required by the law;

that I will perform noncombatant service in the Armed Forces of the United States when required by the law;

that I will perform work of national importance under civilian direction when required by the law; and

that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

Printed Name of Applicant: Divna Maslenjak

Complete Signature of Applicant: Divna Maslenjak

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

DIVNA MASLENJAK,
Defendant.

Case No. 1:13-cr-126
Youngstown, Ohio
Wednesday, April 16, 2014
9:06 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE
BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

JURY TRIAL

* * *

[Defense counsel]: A couple of comments, if I may, Your Honor.

THE COURT: Sure.

[Defense counsel]: First, the indictment itself talks about, as to Count 1, and if we take a look at the verdict form, it starts with the last word on the second line on the verdict form for Count 1.

THE COURT: I'm there.

[Defense counsel]: That talks about an allegation that "Ms. Maslenjak made material false statements." That was in the indictment. However, both sides wanted to be—present the law as it stands in the Sixth Circuit and otherwise to the court. As the court knows, we did reserve the right in the joint jury instructions and mentioned that in our trial brief, I believe, that both sides addressed it, that the Sixth Circuit does appear not to require materiality to a false statement, but other circuits, at least one that I'm aware of, do seem to require that.

So what I would like to do, in discussing the instructions, is preserve our own objection to the lack of materiality being, at least—if it ends up in the jury instruction, pursuant to Sixth Circuit decision that "material" doesn't come in, I'd like to reserve it just due to the split in the circuit decisions.

THE COURT: You can. And you did discuss that not only—if you did in your trial briefs, I don't remember it, but I did copy that remark into this draft on page 13, the footnote—

[Defense counsel]: Yes.

THE COURT:—that I think you authored, that you "recognize there is a circuit split on the issue of materiality"—

[Defense counsel]: That's correct.

THE COURT:—"and therefore reserves the right ..." So I understand that, of course, when this instruction is ultimately completed, that note comes out, but it was there for the purposes of this conference.

[Defense counsel]: Thank you, Your Honor. And we did want to, again, respectfully bring that matter to

the court's attention and preserve and clarify our position on that.

THE COURT: Yeah, I appreciate that. It's pretty clear to me that the Sixth Circuit has taken a stand, and it is well articulated in *Tongo*, which is *United States versus Tongo*, 16 F.3d 1223, a 1994 case, that there is no materiality requirement for allegations brought by a United States—18, U.S.C., Section 1425. Other circuits have found differently. If the Supreme Court of the United States ever wants to resolve that, it shall and we'll abide by what it says.

But today, I think the fact that *Tongo* says there's no materiality requirement is the appropriate law in this circuit.

[Defense counsel]: I respect that, Your Honor, and that's why we wanted to simply lodge our objection in the instruction that it does not have a materiality requirement to preserve it for possible purposes for a matter, you know, if this ends up on appeal.

THE COURT: I understand that.

[Defense counsel]: Thank you.

* * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

DIVNA MASLENJAK,
Defendant.

Case No. 1:13-cr-126
Youngstown, Ohio
Thursday, April 17, 2014
8:21 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE
BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

JURY TRIAL

* * *

MORNING SESSION

(At 8:21 a.m., prior to the jury entering the courtroom.)

THE COURT: I hope you've had enough time to review the revised draft of the jury instructions, especially that regarding the substantive language regarding Count 1.

* * *

Gentlemen, I am turning to page 12. The changes begin with the third full paragraph that begins "In order to prove," but I still would like you to tell me if there is objection to any part of page 12.

For the government?

[Government counsel]: No objection on behalf of the government.

THE COURT: Mr. Cahoon?

(Pause.)

[Defense counsel]: Thank you for your patience, Your Honor. Oh, you're welcome. I made good use of the time.

Your Honor, I'm essentially not, I guess concerned is the best way to describe it, with what's "Element 2: Contrary to Law" that starts on page 12 and runs over to page 13, Your Honor.

What does concern me, however, is the third full paragraph, "A false statement contained in an immigration or naturalization document does not have to be material in order"—

THE COURT: Let me then just move off of page 12, because I think it's understood there is no objection to page 12. But the subtopic heading at the very bottom, "False Statement Relating to Naturalization," and now I'm on page 13, and, Mr. Cahoon, you may continue.

[Defense counsel]: I am on page 13, Your Honor. I apologize if I said 12.

THE COURT: No, you were correct. I wanted to make the record clear.

[Defense counsel]: Thank you. And I see that there was a footnote about "The Defendant objects to including the subsection on Good Moral Character" as well.

But in the third full paragraph, page 13, it states, "A false statement contained in an immigration or naturalization document does not have to be material," et cetera.

Your Honor, two reasons I'm objecting to that sentence relating to the materiality requirement. Two reasons. Number one, we know, and we have discussed it previously, Your Honor, that there is a split among the circuits, and I fully acknowledge that the Sixth Circuit apparently does not require materiality. However, to preserve the record, I do wish to lodge an objection for the reasons that we have previously stated. We believe materiality is an element, and for that reason, we would object to that sentence being in there.

There is a second reason as well, Your Honor. And that is that the indictment itself had materiality listed in Count 1. And we would respectfully submit that that is the burden or standard that the government put on itself in giving us notice of what we were charged with. And since that's in the indictment, we submit that that's what the government ought to have to prove.

So for those two reasons, Your Honor, we would ask that that sentence about materiality be deleted.

Thank you, Your Honor.

THE COURT: You're welcome.

Mr. Hollingsworth?

[Government counsel]: Thank you, Your Honor.

The United States believes that materiality is not an element, as previously discussed, in reliance on *U.S. v. Tongo*.

As it pertains to the argument about the content of the indictment, the charging language alleges that the defendant, on a certain date, did knowingly procure, contrary to law, her naturalization. And then it further specifies what the United States believes that she did.

The United States believes that we could easily prove that the statement was material, but we don't think that we have to under the law.

THE COURT: I understand that, but I'd like you to go further, because what [defense counsel] said is correct, the indictment—and you agree with this—uses the materiality language, and that's mimicked in the verdict form. And what he's saying is, while he doesn't believe it should exist, but he acknowledges it exists in the Sixth Circuit. So the statement on page 13 represents Sixth Circuit law. I think we all agree on that, although the defendant objects nonetheless.

But the question for you, and you haven't objected, I just would like to resolve it now, the verdict form and the recitation of the charge regarding Count 1 include the modifier "material" before "false statements."

And because it's what was presented to the grand jury, and as [defense counsel] said, it's the burden that the government took on, he believes it should stay in. Your response to that?

[Government counsel]: Your Honor, I spoke with [defense counsel] last night, and the parties agreed

that in the verdict form, the word "material" should come out. There was one other—

THE COURT: I don't think that's what he thinks. The impression I was left with, he said he thought it should stay in.

[Defense counsel]: Your Honor, that is if the court disagreed with us. We understood that the court may take it out.

THE COURT: Yeah, because the law—

[Defense counsel]: We didn't agree to waive that requirement at all, Your Honor.

THE COURT: Right. And that's the reason I have X'd it out, but I wanted to make sure I understood, you have no objection then. The reason I'm asking if you have an objection, of course I want my instruction to represent the law. The law does not require "material." The instruction will be different from your indictment.

So the language in the indictment is set in stone. The law should be correct. So I take it out. I will take it out of the verdict form, and the verdict form will not match the indictment in that way.

[Government counsel]: That's correct, Your Honor.

We have no objection to that.

THE COURT: I think the record is clear.

Mr. Cahoon, your objection to the language in the first sentence of the third paragraph on page 13 that says "does not have to be material," your objection is noted, preserved, but overruled. I am going to leave that in because that is correct law.

* * *

(Jury in at 9:20 a.m.)

THE CLERK: The matter before the court is Case Number 1:13-cr-126, the United States of America versus Divna Maslenjak.

THE COURT: Good morning, everyone. You may retake your seats.

Welcome back, Jurors. Before we proceed further, is there anything that any of you have to report to the court?

Thank you.

Now we've come to the time in the trial wherein I instruct you on the law. It's the custom in federal courts that the judge reads the jury instructions to the jury, and I'll do that in a moment. It might take me almost 30 minutes to read the instructions. It's not very long. Sometimes it takes much longer. I would ask that you listen attentively.

* * *

The defendant has been charged with two crimes. The number of charges is no evidence of guilt, and this should not influence your decision in any way. It is your duty to separately consider the evidence that relates to each charge, and to return a separate verdict for each one. For each charge, you must decide whether the government has presented proof beyond a reasonable doubt that the defendant is guilty of that particular charge.

Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on the other charge.

Count 1 - Naturalization Fraud.

Count 1 of the indictment charges the defendant with knowingly procuring her naturalization contrary to law. The indictment reads as follows:

"On or about August 3rd, 2007, in the Northern District of Ohio, Eastern Division, Divna Maslenjak, while a citizen of Bosnia-Herzegovina, and an alien, did knowingly procure, contrary to law, her naturalization, that is: Divna Maslenjak made material false statements on a Form N-400 Application for Naturalization by answering 'no' to Question Number 23 which asked whether the applicant had 'knowingly given false or misleading information to any United States government official while applying for any immigration benefit or to prevent deportation, exclusion or removal' or by answering 'no' to Question Number 24 which asked whether the applicant had 'ever lied to any United States government official to gain entry or admission into the United States' and answering the same during her interview for naturalization when Divna Maslenjak then knew well that she had lied to government officials when applying for her refugee status and her lawful pertinent resident status and thereby gained admission into the United States, in violation of Title 18, Section 1425(a), United States Code."

Count 1 of the indictment charges the defendant with violating Section 1425(a) of Title 18 of the United States Code. That section provides in relevant part:

"Whoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or of citizenship shall be guilty of a crime."

In order to prove defendant guilty of naturalization fraud, the government must prove each of the following elements beyond a reasonable doubt:

In order to prove defendant guilty of naturalization fraud, the government must prove each of the following elements beyond a reasonable doubt. I've stated that twice.

First, that defendant procured naturalization;

Second, defendant procured her naturalization contrary to law; and

Third, defendant acted knowingly.

Element Number 1: Procured Naturalization.

The government must prove beyond a reasonable doubt that defendant procured naturalization. To establish this element, the government must prove that defendant obtained United States citizenship.

In order to prove—

Element Number 2: Contrary to Law.

In order to prove that defendant acted "contrary to law," the government must prove that defendant acted in violation of at least one law governing naturalization. It is not necessary for the government to prove that defendant acted in violation of all the laws governing naturalization; if defendant violated one law governing naturalization, that is enough to establish that she acted "contrary to law" under 18, U.S.C., Section 1425(a).

False Statement Relating to Naturalization.

One of the laws which governs naturalization prohibits an applicant from knowingly making any false statement under oath, relating to naturalization.

Whether a statement is "false"—whether a statement is "false"—pardon me, I will start again.

A statement is "false" if it was untrue when made.

A false statement contained in an immigration or naturalization document does not have to be material in order for the defendant to have violated the law in this case. Even if you find that a false statement did not influence the decision to approve the defendant's naturalization, the government need only prove that one of defendant's statements was false.

The government must prove beyond a reasonable doubt that defendant knew one or more of the statements alleged in Count 1 of the indictment were false when made.

Good Moral Character.

Another law governing naturalization requires an applicant to demonstrate that "she has been and still is a person of good moral character." This encompasses a five-year period prior to the filing of the Application for Naturalization, as well as the period between the examination and the administration of the oath of allegiance. Giving false testimony for the purpose of obtaining any immigration benefit precludes someone from being regarded as having good moral character. If an applicant does not possess good moral character, the applicant is not entitled to naturalization.

Element Number 3: Knowingly.

To act knowingly means to act intentionally and voluntarily, and not because of ignorance, mistake, accident or carelessness.

Count 2—Use of Unlawfully Obtained Naturalization.

Count 2 of the indictment charges defendant with using an unlawfully issued certificate of naturalization for any purpose. Count 2 reads as follows:

"On or about February 6, 2009, in the Northern District of Ohio, Eastern Division, Divna Maslenjak, did knowingly use an unlawfully issued certificate of naturalization for the purpose of filing a Form I-130 Petition for Alien Relative to assist her husband in securing his lawful permanent resident status based upon their marriage, said certificate of naturalization having been obtained contrary to law by Divna Maslenjak's material false statements made during the application process for naturalization, in violation of Title 18, Section 1423, United States."

Count 2 of the indictment alleges that defendant—pardon me, charges the defendant with violating Section 1423 of Title 18 of the United States Code. That section provides in relevant part:

"Whoever knowingly uses for any purpose ... a certificate of naturalization ... unlawfully issued ... showing any person to be naturalized or admitted to be a citizen, shall be guilty of a crime."

In order to prove the defendant guilty of using an unlawfully obtained naturalization certificate, the government must prove beyond a reasonable doubt:

First, that the defendant's naturalization certificate was unlawfully obtained;

Second, that the defendant used her naturalization certificate;

Third, that defendant knew she was using her naturalization certificate.

1. Procured by Fraud.

The first element the government must prove beyond a reasonable doubt is that defendant procured her naturalization certificate by fraud.

In order to prove this element, the government must prove that defendant procured her naturalization by fraud as alleged in Count 1 of the indictment, on which I have already instructed you.

Defendant Used Her Naturalization Certificate.

The second element is one the government must prove beyond a reasonable doubt is that the defendant used her naturalization certificate by filing a Form I-130 Petition for Alien Relative as alleged in Count 2 of the indictment.

Knowledge.

The third element the government must prove beyond a reasonable doubt is that defendant knowingly used her naturalization certificate in filing the Form I-130.

To act knowingly means to act intentionally and voluntarily, and not because of ignorance, mistake, accident or carelessness.

Next, I want to explain something about proving defendant's state of mind.

Ordinarily, there is no way that a defendant's state of mind can be proved directly. Ordinarily, there is no way that a defendant's state of mind can be proved directly, because no one can read another person's mind and tell what that person is thinking.

But a defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the defendant said, what the defendant did, how the defendant acted, and any other

facts or circumstances in evidence that show what was in the defendant's mind.

You may also consider the natural and probable results of any acts that defendant knowingly did or did not do, and whether it is reasonable to conclude that defendant intended those results. This, of course, is all for you to decide.

That concludes the part of my instructions explaining the elements of the crimes charged.

* * *

THE COURT: Counsel, I have developed a three-sentence response. The first sentence is taken verbatim from page 3 of the instructions as I read. It's the sentence at the bottom, under the subtopic heading "Evidence Defined," and the sentence is: "You must make your decision based only on the evidence you saw and heard here in court."

Sentence number two: "You may also rely on your collective memories."

Sentence number three: "You have now what you need to decide the case."

Any objection to that on behalf of the United States?

[Government counsel]: No objection, Your Honor.

THE COURT: Any objection to that on behalf of the defense?

[Defense counsel]: No, Your Honor.

* * *

AT START OF TRIAL JURY WAS TOLD THAT DIANA APPLIED FOR REFUGEE STATUS DUE TO A FEAR OF PERSECUTION DUE TO HER HUSBAND NOT SERVING IN THE MILITARY DURING THE WAR.

ON EXHIBIT # 26 IT STATES THAT DIANA WAS APPLYING FOR REFUGEE STATUS DUE TO FEAR OF PERSECUTION DUE TO HER ETHNICITY.

WHAT WAS HER REFUGEE STATUS GRANTED ON?

FEAR OF NOT SERVING?

OR FEAR OF ETHNIC BACKLASH.

FILED
2014 APR 17 PM
DISTRICT COURT
NORTHERN DISTRICT OF OHIO

FILED
2014 APR 17
PM 6:05
U.S. District
Court Northern
District of Ohio
Youngstown

PEARSON J.

Case No. 1:13cr126

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DIVNA MASLENJAK,

Defendant.

JUDGE BENITA Y. PEARSON

VERDICT FORM - COUNT 1

We, the jury, unanimously find Defendant Divna Maslenjak (circle one) **[guilty]** / not guilty of knowingly procuring, contrary to law, her, naturalization, that is: Divna Maslenjak made false statements on a Form N-400 Application for Naturalization by answering "no" to question No. 23 which asked whether the applicant had "knowingly given false or misleading information to any U.S. government official while applying for any immigration benefit or to prevent deportaton, exclusion or removal" or by answering "no" to question No. 24 which asked whether the applicant had "ever lied to any U.S. Government official to gain entry or admission into the United States" and answering the same during her interview for naturalization when Divna Maslenjak then well knew that she had lied to government officials when applying for her refugee status or her lawful permanent residence status and thereby gained

admission into the United States, in violation of Title 18, Section 1425(a), United States Code.

Each of us said jurors concurring in said verdict signs his/her name hereto on this 17th day of April, 2014 (MUST BE UNANIMOUS)

/s/ Juror Signature	*/s/ Juror Signature*
/s/ Juror Signature	*/s/ Juror Signature*
/s/ Juror Signature	*/s/ Juror Signature*
/s/ Juror Signature	*/s/ Juror Signature*
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FILED
2014 APR 17
PM 6:06
U.S. District
Court Northern
District of Ohio
Youngstown

[Complete this page only if your verdict on Verdict Form - Count 1 is guilty]

PEARSON J.

Case No. 1:13cr126

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DIVNA MASLENJAK,

Defendant.

JUDGE BENITA Y. PEARSON

VERDICT FORM - COUNT 2

We, the jury, unanimously find Defendant Divna Maslenjak (circle one) **[guilty]** / not guilty of knowingly using an unlawfully issued certificate of naturalization for the purpose of filing a Form I-130 Petition for Alien Relative to assist her husband in securing his lawful permanent resident status based upon their marriage, said certificate of naturalization having been obtained contrary to law by Divna Maslenjak's false statements made during the application process for naturalization, in violation of Title 18, Section 1423, United States Code.

Each of us said jurors concurring in said verdict signs his/her name hereto on this 17th day of April 2014. (MUST BE UNANIMOUS)

/s/ Juror Signature

/s/ Juror Signature

/s/ Juror Signature

/s/ Juror Signature

/s/ Juror Signature

/s/ Juror Signature

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/s/ Juror Signature

/s/ Juror Signature

Case No. 1:13cr126

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DIVNA MASLENJAK,

Defendant.

JUDGE BENITA Y. PEARSON

ORDER

[Resolving ECF No. 42]

WHEREAS, Defendant Divna Maslenjak has been convicted of Naturalization Fraud, having been found guilty of that offense pursuant to 18 U.S.C. § 1425 following a jury trial and having been sentenced on August 7, 2014. The conviction for naturalization fraud as charged in Count 1 of the Indictment serves as a predicate for the revocation of Defendant's citizenship pursuant to 8 U.S.C. § 1451, which provides in pertinent part as follows:

> (e) When a person shall be convicted under section 1425 of Title 18 of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled. Jurisdiction is conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.

It is therefore ordered that the final order admitting Defendant Divna Maslenjak to citizenship is hereby revoked, set aside, and declared void and her certificate of naturalization is hereby canceled. Defendant Divna Maslenjak shall surrender the certificate of naturalization to the Department of Homeland Security.

IT IS SO ORDERED.

Date: August 14, 2014

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge

RECORD
AND
BRIEFS

Supreme Court, U.S.
FILED
NOV 23 2016
OFFICE OF THE CLERK

No. 16-309

In the Supreme Court of the United States

DIVNA MASLENJAK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether a conviction under 18 U.S.C. 1425(a) for knowingly procuring naturalization contrary to law, based on misrepresentations in the defendant's application for naturalization, requires proof that the misrepresentations were material.

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In the Supreme Court of the United States

No. 16-309

DIVNA MASLENJAK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The decision of the court of appeals (Pet. App. 1a-39a) is reported at 821 F.3d 675.

JURISDICTION

The judgment of the court of appeals was entered on April 7, 2016. A petition for rehearing was denied on May 27, 2016 (Pet. App. 40a). On August 3, 2016, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including September 26, 2016. The petition for a writ of certiorari was filed on September 8, 2016. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Ohio, petitioner was convicted on one count of knowingly procuring naturalization contrary to law, in violation of 18 U.S.C. 1425(a), and one count of knowingly using an unlawful-

ly issued certificate of naturalization, in violation of 18 U.S.C. 1423. Pet. App. 2a. The district court sentenced petitioner to two years of probation and revoked her naturalization under 8 U.S.C. 1451(e). Pet. App. 6a. The court of appeals affirmed. *Id.* at 38a.

1. Petitioner is an ethnic Serb and a native of what is today the nation of Bosnia, formerly part of Yugoslavia. Pet. App. 3a. Petitioner was born in a predominantly Serbian village, but Muslims made up the majority of the population in the surrounding region, resulting in clashes with ethnic Serbs like petitioner and her family. *Ibid.* In 1992, petitioner briefly moved with her family from her home village to the Serbian city of Belgrade but returned to Bosnia soon after. *Ibid.* As the breakup of Yugoslavia accelerated in the 1990s, and conditions in Bosnia deteriorated, the United States sent immigration officials to Belgrade to assist refugees fleeing Bosnia and the ethnic cleansing taking place there. *Ibid.*

In April 1998, petitioner and her family met with an American immigration official in Belgrade to seek refugee status based on their fear of persecution in their home region of Bosnia. Pet. App. 3a. Petitioner was the primary applicant on her family's asylum application. *Id.* at 3a-4a. She stated under oath that her family feared persecution because her husband, Ratko Maslenjak, did not serve in the Bosnian Serb army during the civil war. *Id.* at 4a. Petitioner swore that when she returned to Bosnia with her children in 1992, her husband had remained in Serbia to avoid conscription into the Bosnian Serb army. *Ibid.* Petitioner claimed that, as a result, she and her husband had lived apart from 1992 to 1997. *Ibid.* Based on those representations, petitioner and her family, in-

cluding her husband, were granted refugee status and immigrated to the United States in 2000, where they settled in Ohio. *Ibid.* In 2004, petitioner obtained lawful permanent resident status. *Ibid.*

Several years later, immigration officials discovered that petitioner's story was false. See Pet. App. 4a. Military records revealed that Ratko Maslenjak had been an officer in the Bratunac Brigade of the Army of the Republic Srpska, also known as the Bosnian Serb Army or VRS, and that he had served during a timeframe that included the unit's participation in the 1995 genocide of 8000 Bosnian Muslims, known as the Srebrenica massacre. *Ibid.* Petitioner was present when, in December 2006, immigration officials questioned Ratko at the family's Ohio home about his failure to disclose his military service. *Ibid.* Soon after, Ratko was charged with two counts of making a false statement on a government document and was arrested. *Id.* at 4a-5a.

One week after Ratko's arrest, petitioner filed an N-400 Application for Naturalization. Pet. App. 5a; see *id.* at 65a-74a (copy of application). One of the questions on the application asked whether she had ever "given false or misleading information to any U.S. government official while applying for any immigration benefit or to prevent deportation, exclusion or removal." *Id.* at 72a (question 23). Another question asked whether petitioner had ever "lied to any U.S. government official to gain entry or admission into the United States." *Ibid.* (question 24). Petitioner falsely answered "no" to both questions. *Ibid.* Petitioner was also interviewed under oath about her written answers, but she declined to make any changes when given the opportunity. *Id.* at 5a. In August 2007,

petitioner was naturalized as a United States citizen. *Ibid.*

In October 2007, Ratko was convicted on both counts of making false statements on a government document, rendering him subject to removal from the United States. Pet. App. 5a. In an effort to avoid removal, Ratko filed a petition for asylum, and petitioner testified on her husband's behalf at his asylum hearing. *Ibid.* During her testimony, petitioner admitted that she and her husband had in fact lived together in Bosnia after 1992 and that she had lied during her 1998 refugee application interview in Belgrade. *Id.* at 5a-6a.

2. Petitioner was charged on one count of "knowingly procur[ing], contrary to law, her naturalization," in violation of 18 U.S.C. 1425(a). Indictment 1-2; see Pet. App. 6a. The indictment alleged that petitioner had "made material false statements" by answering "no" to questions 23 and 24 on her Form N-400 Application for Naturalization, and by "answering the same" during her naturalization interview, even though she "then well knew that she had lied to government officials when applying for her refugee status and her lawful permanent resident status and thereby gained admission into the United States." Indictment 1-2. Petitioner was also charged with knowingly misusing evidence of naturalization, in violation of 18 U.S.C. 1423, in connection with her attempt to obtain lawful permanent resident status for her husband. Pet. App. 6a.

a. At the conclusion of the evidence at trial, the district court instructed the jury on the elements of Section 1425(a), as well as the elements of two underlying federal laws related to naturalization, 18 U.S.C.

1015(a) and 8 U.S.C. 1427(a)(3). Pet. App. 84a-86a. With regard to Section 1425(a), the court stated that "[i]n order to prove that the defendant acted 'contrary to law' the government must prove that defendant acted in violation of at least one law governing naturalization." *Id.* at 85a. With regard to Section 1015(a), the court told the jury that a naturalization applicant is guilty of that offense if he or she "knowingly mak[es] any false statement under oath, relating to naturalization." *Ibid.* The court further instructed that a "false statement contained in an immigration or naturalization document does not have to be material in order for the defendant to have violated the law in this case." *Id.* at 86a. Petitioner objected to those instructions insofar as they did not require the jury to find that petitioner had made a material false statement under Sections 1425(a) and 1015(a). *Id.* at 75a-82a. The court overruled the objection. *Id.* at 82a.

Next, the district court instructed the jury on 8 U.S.C. 1427(a)(3), which "requires an applicant to demonstrate that 'she has been and still is a person of good moral character.'" Pet. App. 86a. The court instructed the jury that "[g]iving false testimony for the purpose of obtaining any immigration benefit precludes someone from being regarded as having good moral character." *Ibid.*; see 8 U.S.C. 1101(f)(6). The court added that "[i]f an applicant does not possess good moral character, the applicant is not entitled to naturalization." Pet. App. 86a.

b. The jury convicted petitioner on both counts. Under 8 U.S.C. 1451(e), petitioner's conviction for violating Section 1425(a) resulted in mandatory revocation of her naturalization. Pet. App. 6a.

3. The court of appeals affirmed. Pet. App. 1a-39a. As the court explained, petitioner's conviction under Section 1425(a) required proof that she "had obtained her naturalization 'contrary to law,' meaning the government had to prove that her conduct violated at least one other law applicable to naturalization." *Id.* at 9a. In this case, the government offered evidence that petitioner had violated two such laws: (1) 18 U.S.C. 1015(a), which prohibits knowingly making a false statement under oath relating to naturalization; and (2) 8 U.S.C. 1427(a)(3), which prohibits the naturalization of a candidate who lacks "good moral character," defined to include a person "who has given false testimony for the purpose of obtaining" an immigration benefit, 8 U.S.C. 1101(f)(6). See Pet. App. 9a.

The court of appeals considered and rejected petitioner's argument that proof of a material false statement was required to sustain a conviction under Section 1425(a). Pet. App. 7a, 15a. The court observed that "the term 'material' is found nowhere in § 1425(a)," and thus "[a] plain reading of the statute" indicates that materiality is not an element of the offense. *Id.* at 8a. The court rejected petitioner's invitation to "[r]ead[] an implied element of materiality into" Section 1425(a). *Id.* at 9a. Doing so, the court explained, would be "inconsistent with other laws criminalizing false statements in immigration proceedings and regulating the naturalization process." *Ibid.*

The court of appeals also observed that neither of the predicate offenses on which petitioner's Section 1425(a) conviction was based—Section 1015(a) and 8 U.S.C. 1427(a)(3)—requires proof of materiality. Requiring materiality under Section 1425(a) thus

"would lead to incongruous legal outcomes." Pet. App. 10a, 19a; see *id.* at 18a-19a, 25a.

The court of appeals explained that the lack of a materiality requirement under Section 1425(a) was consistent with Congress's establishment of "a two-track system for denaturalization." Pet. App. 10a. Under one track, denaturalization can occur in a civil proceeding in which the government is subject to a lower burden of proof but is explicitly required to demonstrate "concealment of a material fact." *Ibid.* (quoting 8 U.S.C. 1451(a)). Under the second track, invoked in this case, denaturalization is "a mandatory ministerial act" under 8 U.S.C. 1451(e) that follows a criminal conviction pursuant to Section 1425(a). Pet. App. 10a; see *id.* at 12a-13a. Although conviction under Section 1425(a) itself does not require the government to prove materiality, the government must meet the exacting procedural and constitutional requirements of a criminal prosecution, including proving the elements of the offense beyond a reasonable doubt. *Id.* at 12a-13a.

Finally, the court of appeals recognized that other circuit courts had suggested or held that Section 1425(a) includes an implied element of materiality, but it found those decisions "unpersuasive." Pet. App. 22a. In particular, the court stated that the Ninth Circuit's decision in *United States* v. *Puerta*, 982 F.2d 1297 (1992), "suffers from a number of problems," including that it interprets the phrase "contrary to law" in a manner that "ignores the fact that other violations of federal law pertaining to false statements in immigration proceedings do not require proof of materiality," Pet. App. 24a. Other circuits have followed *Puerta* "without engaging in their own analysis

of the statutory language," *id.* at 23a, or have assumed that materiality was required based on the parties' agreement, *id.* at 22a.

Judge Gibbons concurred in order to express her "uncertain[ty]" as to "what goal Congress intended to further by omitting materiality from the elements of § 1425(a)." Pet. App. 39a. She nonetheless joined the unanimous decision because "the view most faithful to the statute is that materiality is not an element of the § 1425(a) offense." *Ibid.*

ARGUMENT

Petitioner contends (Pet. 15-24) that materiality is an element of a conviction under 18 U.S.C. 1425(a) for knowingly procuring naturalization contrary to law. Petitioner is incorrect. Section 1425(a) does not require proof of materiality, and reading that requirement into the statute would contravene principles of statutory interpretation, would conflict with the scheme of criminal and civil immigration laws, and would lead to incongruous results. Although some disagreement exists among the courts of appeals, the disagreement is far shallower than petitioner suggests and does not warrant this Court's intervention.

1. Section 1425(a) prohibits "knowingly procur[ing] or attempt[ing] to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or of citizenship." 18 U.S.C. 1425(a). As the court of appeals noted, "the term 'material' is found nowhere in § 1425(a)." Pet. App. 8a. Thus, under "[a] plain reading of the statute," materiality is not an element of the offense. *Ibid.*; see *United States* v. *Wells*, 519 U.S. 482, 490 (1997) (declining to infer materiality requirement where statute, 18 U.S.C. 1014, prohibited making a false statement

for the purpose of influencing the actions of a bank but did not "so much as mention materiality"); see also *United States* v. *Shabani*, 513 U.S. 10, 17 (1994) (declining to infer an overt-act requirement into drug conspiracy statute, 21 U.S.C. 846, where "the plain language of the statute," by failing to mention such a requirement, "reveal[s] that proof of an overt act is not required").

a. Petitioner argues (Pet. 16) that reliance on the plain text of Section 1425(a) "is an overly simplistic approach to statutory interpretation." She also contends (Pet. 16-17) that "§ 1425(a) requires materiality through the word 'procure'" because "an immaterial false statement that 'did not influence' the naturalization decision could not possibly have 'procured' that decision." But she cites no authority establishing in this context that "procure" inherently requires a material false statement or, indeed, a false statement of any kind. See Pet. App. 24a; see also pp. 12-13, *infra*. Unlike the word "fraud," the word "procure" is not a common law term that as a matter of presumed congressional intent carries a materiality requirement. Cf. *Neder* v. *United States*, 527 U.S. 1, 22-23 (1999) (applying that rule to mail fraud, in violation of 18 U.S.C. 1341).

Petitioner's effort to read into Section 1425(a) a materiality requirement is similar to an argument that this Court rejected in *Wells*, *supra*. There, the Court considered whether 18 U.S.C. 1014, which prohibits "knowingly making any false statement or report for the purpose of influencing" certain banking decisions, requires proof that the false statement was material. 519 U.S. at 490 (brackets, citation, and ellipsis omitted). The Court determined that proof of materiality

was not required. The Court relied first and foremost on the statute's text, observing that "[n]owhere does [the statute] further say that a material fact must be the subject of the false statement or so much as mention materiality." *Ibid.* (footnote omitted). "To the contrary," the Court explained, "its terms cover 'any' false statement that meets the other requirements of the statute, and the term 'false statement' carries no general suggestion of influential significance." *Ibid.*

Especially notable for present purposes, the *Wells* Court was unpersuaded by the defendants' argument that it should "read[] materiality into the statute to avoid the improbability that Congress intended to impose substantial criminal penalties on relatively trivial or innocent conduct." 519 U.S. at 498. Focusing on the requirement that the false statement must be made "'for the purpose of influencing' a bank," the Court explained that such a statement "will not usually be about something a banker would regard as trivial." *Id.* at 499. Therefore, the Court concluded, a "literal reading of the statute"—that is, a reading that did *not* infer an unstated materiality requirement—"will not normally take the scope of § 1014 beyond the limit that a materiality requirement would impose." *Ibid.* The same logic applies to a conviction under Section 1425(a).

b. Petitioner further contends (Pet. 22) that her conviction "cannot stand because § 1015(a)—a predicate offense for the § 1425(a) violation in this case—also requires a material false statement." Petitioner is mistaken.

As an initial matter, petitioner's argument ignores that the jury was instructed on *two* predicate offenses: Section 1015 and 8 U.S.C. 1427(a)(3). See Pet. App.

85a-86a. The latter statute prohibits naturalization of a person who is not "a person of good moral character," which is defined to exclude "one who has given false testimony for the purpose of obtaining" naturalization, 8 U.S.C. 1101(f)(6). At no point in this litigation has petitioner alleged that proof of materiality is required either under 8 U.S.C. 1427(a)(3) or under its definitional statute, 8 U.S.C. 1101(f)(6), neither of which mentions materiality. See Pet. App. 25a n.9 (observing that petitioner "has not challenged this aspect of the jury instructions"). As far as the predicate offenses are concerned, therefore, the verdict is supported by sufficient evidence on a valid legal theory, regardless of the materiality of petitioner's falsehoods. And for the reasons discussed below, even if an error in the Section 1015(a) jury instructions existed in failing to mention materiality, it would be harmless. See pp. 17-18, *infra*; see also *Skilling* v. *United States*, 561 U.S. 358, 414 (2010) (error on one alternative theory of guilt may be harmless).

In any event, proof of materiality is also not required under Section 1015(a). That provision punishes a person who "knowingly makes any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization." As the Ninth Circuit has observed, "Congress's omission of 'material' from § 1015(a), combined with its inclusion of 'material' in a similar statutory provision ([18 U.S.C.] § 1001(a)), is evidence of Congress's expressed intent not to impose a materiality requirement in § 1015(a)." *United States* v. *Youssef*, 547 F.3d 1090, 1094 (2008); see *id.* at 1093 ("As in *Wells*, § 1015(a) does not include an express materiality requirement."). Thus,

"[e]very other circuit to consider the question has reached the same result and held that materiality is not an element of § 1015(a)." Pet. App. 18a-19a; see *Youssef*, 547 F.3d at 1095 ("[W]e do not interpret § 1015 to include a materiality requirement."); *United States* v. *Abuagla*, 336 F.3d 277, 279 (4th Cir. 2003) (similar). Because neither of the predicate offenses relied upon in this case requires proof of materiality, it would be anomalous to read an implied materiality requirement into Section 1425(a).

Petitioner's argument is also inconsistent with the statutory scheme more generally. As the court of appeals recognized, Section "1425(a) is but one statute within a broader statutory framework governing denaturalization." Pet. App. 9a. The phrase "contrary to law" in Section 1425(a) "is broad enough to include not only violations of the INA's [Immigration and Naturalization Act's] administrative requirements for naturalization but also any criminal offense against the United States pertaining to naturalization." *Id.* at 16a-17a. Courts of appeals have thus affirmed convictions under Section 1425(a) that were based on predicate violations of a number of different statutes. See, *e.g.*, *United States* v. *Munyenyezi*, 781 F.3d 532, 536 (1st Cir.) (predicate violation of 18 U.S.C. 1001), cert. denied, 136 S. Ct. 214 (2015); *United States* v. *Damrah*, 412 F.3d 618, 622-623 (6th Cir. 2005) (18 U.S.C. 1001 and 1015(a)); *United States* v. *Alameh*, 341 F.3d 167, 171-172 (2d Cir. 2003) (18 U.S.C. 1546(a)).

Under such a regime—in which the defendant's conduct may be alleged as being "contrary to law" under several different provisions—an implied requirement of materiality makes little sense. For ex-

ample, a defendant might knowingly procure or attempt to procure naturalization by bribing an immigration official. Although such conduct would plainly satisfy the "contrary to law" element of Section 1425(a), see 18 U.S.C. 201(b)(1), it would involve no false statement or omission to which a materiality requirement might be applied. Furthermore, as the court below pointed out, under petitioner's reading of the statutory scheme, "a person could violate 18 U.S.C. § 1015(a) by making 'any immaterial false statement' on an application for naturalization but [would] not be guilty of procuring his naturalization 'contrary to law' in violation of 18 U.S.C. § 1425(a), unless the government could also show that the false statement was material." Pet. App. 19a (brackets omitted). Nothing supports the supposition that Congress intended such an incongruous result.

c. Finally, petitioner argues (Pet. 17-18) that a materiality requirement should be read into Section 1425 because materiality is an element under the civil denaturalization statute, 8 U.S.C. 1451(a). Petitioner is again mistaken.

As the court of appeals explained, "[t]he INA creates what are essentially two alternative paths for denaturalization," one civil and one criminal. Pet. App. 10a. First, under 8 U.S.C. 1451(a), a citizen's naturalization may be set aside in a civil proceeding if such "naturalization w[as] illegally procured or w[as] procured by concealment of a material fact or by willful misrepresentation." Second, under 8 U.S.C. 1451(e), denaturalization occurs as an automatic consequence of a criminal conviction under Section 1425. The difference between those two paths confirms why

reading a materiality requirement into Section 1425 would be inappropriate.

By its plain language, the civil denaturalization provision requires proof that naturalization was procured "by concealment of a *material* fact." 8 U.S.C. 1451(a) (emphasis added); see *Kungys* v. *United States*, 485 U.S. 759, 772-773 (1988). The criminal provision, in contrast, contains no similar requirement; and, indeed, petitioner "does not argue that 8 U.S.C. § 1451(e) contains an implied element of materiality." Pet. App. 13a. Congress's inclusion of a materiality requirement in the civil denaturalization provision, while simultaneously omitting a similar requirement from the criminal provision, reinforces the conclusion that Congress *also* did not require proof of materiality under the statute that triggers criminal denaturalization—namely, Section 1425(a). See *Barnhart* v. *Sigmon Coal Co.*, 534 U.S. 438, 452 (2002) ("[I]t is a general principle of statutory construction that when Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress act[ed] intentionally and purposely.") (internal quotation marks omitted).

The different elements for civil and criminal denaturalization also reflect the different procedural safeguards that apply to those paths. In a civil proceeding under 8 U.S.C. 1451(a), once the government initially offers clear and convincing proof that the naturalized citizen improperly procured naturalization, the burden shifts to the defendant to rebut a "presumption of ineligibility." Pet. App. 11a. Given the burden-shifting and relatively low standard of proof in such a civil proceeding, it makes sense that Congress would impose a

heightened materiality requirement. Under the criminal path, by contrast, denaturalization will not occur unless the defendant has been convicted of a criminal offense under Section 1425. "[A]s in any criminal prosecution, the government has the burden to establish the elements of the offense beyond a reasonable doubt, and the accused has the right to all of the constitutional due process he would otherwise not receive as part of a civil denaturalization proceeding under [8 U.S.C.] § 1451(a), including the right not to testify or put on proof at all." *Id.* at 13a.

Petitioner responds (Pet. 18) that "greater procedural protections are generally required for criminal as opposed to civil proceedings * * * because criminal proceedings generally have a more direct adverse impact on a person's life, liberty, or property." Although that is true as a general matter, the consequence of a civil proceeding under 8 U.S.C. 1451(a) is the same as one of the consequences of a criminal proceeding under 8 U.S.C. 1451(e): the loss of citizenship. Therefore, "for Congress to impose greater *substantive* requirements in civil denaturalization proceedings, where lesser *procedural* protections are required," is not "counter-intuitive" as petitioner claims (Pet. 18), but instead is "consistent with a two-track statutory scheme for denaturalization," Pet. App. 29a.

2. Petitioner asserts (Pet. 1, 15-16) that the decision in this case conflicts with prior decisions of the First, Fourth, Seventh, and Ninth Circuits. While some disagreement between the courts of appeals does exist, petitioner greatly overstates the conflict. And in any event, this case would be a poor vehicle to address whether a conviction under Section 1425(a)

requires proof of materiality because petitioner's lies plainly were material.

a. The earliest case in support of petitioner's position was *United States* v. *Puerta*, 982 F.2d 1297 (1992), in which the Ninth Circuit held that the government was required to prove that the defendant's statements were material in order to support a conviction under Section 1425(a). The court's analysis was brief and was based primarily on three considerations: (1) proof of materiality is required in a civil denaturalization proceeding under 8 U.S.C. 1451(a); (2) "the government agree[d] with Puerta that § 1425(a) implies a materiality requirement"; and (3) the court believed that "the gravity of the consequences" of mandatory denaturalization called for a showing of materiality under Section 1425(a). 982 F.2d at 1301 (citation omitted). In *United States* v. *Alferahin*, 433 F.3d 1148, 1155 (2006), the Ninth Circuit reaffirmed its holding in *Puerta*, despite the government's argument "that *Puerta* was decided incorrectly and that § 1425(a) contains no materiality requirement." Petitioner is correct that the holding of *Puerta* is inconsistent with the holding in this case.

But the conflict is not widespread. Although petitioner asserts (Pet. 15) that three other courts of appeals have joined the Ninth Circuit in requiring proof of materiality for a conviction under Section 1425(a), none of the decisions she cites creates a square conflict with the decision below. In the First Circuit's decision in *Munyenyezi*, *supra*, the materiality element was not contested on appeal because the defendant conceded that her "statements were know-

ingly made and material." 781 F.3d at 538 n.6.* In *United States* v. *Latchin*, 554 F.3d 709 (7th Cir. 2009), cert. denied, 558 U.S. 1116 (2010), the parties "agree[d] that a false statement has to be 'material' to sustain a conviction" under Section 1425(a) based on a predicate violation of Section 1001(a). *Id.* at 712. But since Section 1001(a) itself requires proof of a "material" falsehood or omission, the parties had no need to contest—and the court of appeals had no occasion to decide—whether proof of materiality is required where, as here, the "contrary to law" element is satisfied through the violation of a predicate statute that does *not* require materiality. Petitioner's reliance on *United States* v. *Aladekoba*, 61 Fed. Appx. 27 (4th Cir. 2003) (per curiam), is similarly misplaced. Not only can an unpublished decision not create a circuit conflict, but the Section 1425(a) conviction in that case was also premised on the defendant's false statements in violation of Section 1001(a). See *id.* at 28.

In sum, only the Ninth Circuit has held, contrary to the decision below, that materiality is an element of a Section 1425(a) conviction in a case where the issue was contested and the predicate statute did not already require proof of materiality. This Court's plenary review, before the courts of appeals have had an opportunity to choose between *Puerta* and the well-reasoned decision below, would therefore be premature.

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* Petitioner does not rely upon the First Circuit's decision in *United States* v. *Mensah*, 737 F.3d 789 (2013), cert. denied, 134 S. Ct. 1912 (2014), and for good reason. In that case, the defendant was convicted even though the district court had imposed a materiality requirement, *id.* at 807-808, and so the issue was taken as a given on appeal.

b. Finally, this case is a poor vehicle to address whether proof of materiality is required for a conviction under Section 1425(a) because petitioner's misstatements to immigration officials plainly were material. In 1998, petitioner falsely stated under oath to immigration officials that her family feared persecution because her husband had not served in the Bosnian Serb army during the civil war. In fact, petitioner's husband had been an officer in a unit of the Bosnian Serb Army that participated in the Srebrenica massacre, a genocide of Bosnian Muslims. Petitioner also swore to immigration officials that she and her husband had lived apart between 1992 to 1997, when in fact they had lived together during that time. Pet. App. 4a. Only a week after her husband's arrest for making false statements on a government document, petitioner lied twice on her naturalization application, claiming in response to two different questions that she had not given false or misleading information to government officials while applying for immigration benefits. *Id.* at 5a.

Petitioner's lies were material, because they had "a natural tendency to influence, or [were] capable of influencing, the decision of" immigration officials. *Neder*, 527 U.S. at 16 (citation omitted). Indeed, the jury heard testimony that, "had [petitioner] answered those two [naturalization application] questions truthfully, there would have been further investigation into her application for refugee and permanent residence status, and her application would have been significantly delayed and possibly denied." Gov't C.A. Br. 21, 27-28 (citations omitted). Therefore, as the government argued below, see *id.* at 27-29, any error in failing to instruct the jury on materiality was harm-

less. See *Neder*, 527 U.S. at 7-15 (omission of an element is subject to harmless-error analysis).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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No. 16-309

IN THE
Supreme Court of the United States

DIVNA MASLENJAK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

REPLY TO BRIEF IN OPPOSITION

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INTRODUCTION

The brief in opposition only confirms that this Court's review is warranted. The United States concedes, as it must, that the Sixth Circuit's decision below is "inconsistent" with the Ninth Circuit's decisions in *United States v. Puerta*, 982 F.2d 1297, 1301 (9th Cir. 1992), and *United States v. Alferahin*, 433 F.3d 1148, 1155 (9th Cir. 2006). Opp. 16; *see also id.* at 8, 15. Nonetheless, the United States opposes review by arguing that (1) the conflict is "far shallower than petitioner suggests," *id.* at 8; (2) the decision below is correct on the merits, *see id.* at 8-15; and (3) this case is a "poor vehicle" to resolve the conflict, *id.* at 18. The United States is wrong on all three grounds.

REASON FOR GRANTING THE WRIT

The Sixth Circuit Erred By Holding, In Direct Conflict With The First, Fourth, Seventh, And Ninth Circuits, That A Naturalized American Citizen Can Be Stripped Of Her Citizenship In A Criminal Proceeding Based On An Immaterial False Statement.

This Court's review is warranted because the federal courts of appeals are concededly divided on an important and recurring question of federal law: whether a naturalized American citizen can be stripped of her citizenship in a criminal proceeding based on an immaterial false statement. The Sixth Circuit held below that "proof of materiality is *not* required to establish a violation of 18 U.S.C. § 1425(a)," Pet. App. 18a (emphasis added), while the Ninth Circuit has held precisely the opposite, *see Alferahin*, 433 F.3d at 1155; *Puerta*, 982 F.2d at 1301. The Sixth Circuit acknowledged the conflict,

but simply dismissed the contrary authorities as "unpersuasive." Pet. App. 9a, 22a. One member of the panel concurred "with some reluctance" because "[i]nitially, [she] was not inclined to differ from our sister circuits' interpretation of 18 U.S.C. § 1425(a)." Pet. App. 39a (Gibbons, J., concurring). The Sixth Circuit has subsequently confirmed that it "expressly rejected" the Ninth Circuit's approach in this case, *United States v. Al-Kadumi*, __ F. App'x __, 2016 WL 4916935, at *4 (6th Cir. Sept. 15, 2016), and the Eighth Circuit has noted, but not taken sides on, this circuit conflict, *see United States v. Nguyen*, 829 F.3d 907, 916-17 (8th Cir. 2016).

It is with substantial understatement, then, that the United States says that "some disagreement exists among the courts of appeals" on this issue, Opp. 8; that is rather like saying that there was "some disagreement" between "the Allies and the Axis Powers in World War II." *Walton v. Arizona*, 497 U.S. 639, 664 (1990) (Scalia, J., concurring in part and concurring in the judgment). Different federal courts of appeals have adopted diametrically opposed interpretations of the same federal criminal statute. Had petitioner been convicted in San Francisco, her conviction would have been reversed; because she was convicted in Youngstown, her conviction was affirmed, her citizenship was revoked, and she has now been deported.

Rather than disputing the conflict between the Sixth and Ninth Circuits, the United States argues that "[t]he conflict is not widespread," Opp. 16, and attempts to distinguish cases from the First, Fourth, and Seventh Circuits that follow the Ninth Circuit's lead, *see id.* at 16-17. As a threshold matter, that

argument misses the point: even if the conflict were limited to the Sixth and Ninth Circuits, it is sufficiently stark and intractable to warrant this Court's review. Those two circuits, after all, are home to almost a *third* of the Nation's population, and a disproportionate share of immigration cases. The issue presented here arises repeatedly in those circuits (and elsewhere), and the conflicting positions have been thoroughly and definitively spelled out in the conflicting decisions. Accordingly, granting review here would not be "premature," Opp. 17; to the contrary, there is no reason to allow this acknowledged circuit conflict to fester. *Cf. Voisine v. United States*, 136 S. Ct. 2272, 2278 n.2 (2016) (certiorari granted to resolve conflict between First and Ninth Circuits); *Harris v. Viegelahn*, 135 S. Ct. 1829, 1836 (2015) (certiorari granted to resolve "acknowledged" conflict between two circuits).

In any event, the United States' efforts to distinguish the cases from other circuits following the Ninth Circuit's lead are unavailing. The United States attempts to distinguish *United States v. Latchin*, 554 F.3d 709 (7th Cir. 2009), on the ground that "the parties *agreed* that a false statement has to be material to sustain a conviction under Section 1425(a) based on a predicate violation of Section 1001(a)," which contains its own materiality requirement. Opp. 17 (emphasis added; brackets and internal quotation omitted). But even cursory review of that decision shows that the parties there agreed that "the crime of *procuring citizenship* through false statements"—*i.e.*, the § 1425(a) crime—contains a materiality requirement. *Latchin*, 554 F.3d at 712 (emphasis added). And the Seventh Circuit affirmatively "agree[d]" with the parties on

this score, noting that "the civil and criminal [denaturalization] statutes [*i.e.*, 8 U.S.C. § 1451(e) and 18 U.S.C. § 1425(a)] both require a material misrepresentation." *Id.* at 713 n.3; *see also id.* at 715 ("[A] conviction under § 1425(a) requires proof of ... materiality .... We are not alone in this view.") (citing *Alferahin*, 433 F.3d at 1155). And the fact that the Government itself has previously conceded the issue (a point the United States never acknowledges, much less seeks to explain, in its brief) only confirms the need for this Court's review. *See* Pet. App. 25a (noting that the Government "has taken a contrary position on the materiality issue in different cases before different courts"); *id.* at 39a (Gibbons, J., concurring) ("The government's inconsistency in this case and on this issue is puzzling and indeed inappropriate.").

The United States' efforts to distinguish *United States v. Munyenyezi*, 781 F.3d 532 (1st Cir. 2015), are similarly meritless. In that case, according to the United States, "the materiality element was not contested on appeal because the defendant conceded that her 'statements were knowingly made and material.'" Opp. 16-17 (quoting 781 F.3d at 538 n.6). But the First Circuit did not base its materiality holding on any such concession: to the contrary, the First Circuit held that, "*according to our judicial superiors*—there are 'four independent requirements' for a section 1425(a) crime," including that "'the naturalized citizen must have misrepresented or concealed some fact,'" and "'the fact must have been material.'" *Munyenyezi*, 781 F.3d at 536 (quoting *Kungys v. United States*, 485 U.S. 759, 767 (1988)) (emphasis added). As in *Latchin*, the reason that "the materiality element was not contested on

appeal," Opp. 16, is that the *Government* never challenged the existence of that element; the defendant certainly had no incentive to contest the point.

Finally, the United States errs by denying that the Fourth Circuit in *United States v. Aladekoba*, 61 F. App'x 27 (4th Cir. 2003) (*per curiam*), "joined the Ninth Circuit in requiring proof of materiality for a conviction under Section 1425(a)." Opp. 16. In that case, the Fourth Circuit held that the statements underlying a § 1425(a) conviction "must be material in order to be contrary to law." 61 F. App'x at 28 (citing *Puerta*, 982 F.2d at 1301). The United States' insistence that "the Section 1425(a) conviction in that case was also premised on the defendant's false statements in violation of Section 1001(a)," Opp. 17, misses the point: as the citation to *Puerta* underscores, the Fourth Circuit derived the materiality element from § 1425(a) itself, not from the predicate § 1001(a) crime, *see Aladekoba*, 61 F. App'x at 28; *see also United States v. Agunbiade*, No. 98-4581, 172 F.3d 864, 1999 WL 26937, at *2 (4th Cir. Jan. 25, 1999) (*per curiam*). And insofar as the United States asserts that "an unpublished decision [can] not create a circuit conflict," Opp. 17, that assertion is mystifying: this Court routinely grants certiorari to review circuit conflicts involving unpublished decisions. *See, e.g.*, *Henderson v. United States*, 135 S. Ct. 1780, 1784 & n.2 (2015); *Ortiz v. Jordan*, 562 U.S. 180, 183-84 & n.1 (2011).

Because the United States cannot deny the circuit conflict presented here, it devotes the bulk of its brief to arguing that the decision below is correct on the merits. *See* Opp. 8-15. Needless to say, that

argument misses the point: for present purposes, the question is whether this Court should resolve the conflict, not which side of the conflict should prevail.

In any event, the United States is wrong on the merits. The United States caricatures petitioner's position as being that "reliance on the plain text of Section 1425(a) 'is an overly simplistic approach to statutory interpretation.'" Opp. 9 (quoting Pet. 16). But petitioner said nothing of the sort; to the contrary, petitioner's argument is based on the statute's text, which authorizes conviction only insofar as a defendant "knowingly procures or attempts to procure" naturalization contrary to law. 18 U.S.C. § 1425(a). Not any and every underlying violation of law will trigger that provision, but only an underlying violation for the purpose of "procuring" naturalization. *See* Pet. 16-17. The United States never explains how an *immaterial* false statement can satisfy the statutory procurement requirement. *Cf.* Pet. App. 39a (Gibbons, J., concurring) ("[T]he government, in response to questioning at oral argument, was unable to articulate any interest of the United States in prosecuting statements that are immaterial.").

Indeed, the district court here read the procurement requirement out of the statute altogether. The court instructed the jury that the requirement is satisfied if the government "prove[s] that defendant obtained United States citizenship." Pet. App. 85a. Although the court proceeded to instruct the jury that the government also "must prove that defendant acted in violation of at least one law governing naturalization," *id.*, the court never instructed the jury that the Government must prove

a *link* between the violation and the naturalization—*i.e.*, procurement. To the contrary, by instructing jurors that they could convict petitioner "[e]ven if you find that a false statement *did not influence* the decision to approve [her] naturalization," *id.* at 86a (emphasis added), the court affirmatively *negated* the statutory procurement requirement.

The United States has no response to any of this other than to assert that petitioner "cites no authority establishing in this context that 'procure' inherently requires a material false statement or, indeed, a false statement at all." Opp. 9. But that assertion misses the point: where, as here, the predicate violation is a false statement, the United States must prove that the statement is material in order to satisfy the procurement requirement: by definition, an immaterial statement that "did not influence" a naturalization decision, Pet. App. 86a, cannot have "procured" that decision.

The United States similarly errs by challenging petitioner's alternative argument "that her conviction 'cannot stand because § 1015(a)—a predicate offense for the § 1425(a) violation in this case—also requires a material false statement." Opp. 10 (quoting Pet. 22). According to the United States, this alternative argument establishes at most a harmless error, because "the jury was instructed on *two* predicate offenses: Section 1015 and 8 U.S.C. § 1427(a)(3)." *Id.* (emphasis in original).

The jury here, however, returned a *general* verdict that did not specify whether petitioner's conviction on Count I was based on the § 1015 or § 1427(a)(3) predicate offense (or both). *See* Pet. App. 91-92a. Accordingly, it follows that petitioner's conviction is

legally invalid if *either* of the alternative theories of guilt is legally invalid. *See, e.g., Skilling v. United States*, 561 U.S. 358, 414 (2010); *Hedgpeth v. Pulido*, 555 U.S. 57, 58 (2008) (*per curiam*); *Yates v. United States*, 354 U.S. 298, 312 (1957). To be sure, as the Government notes, "error on one alternative theory of guilt *may* be harmless," Opp. 11 (emphasis added; citing *Skilling*, 561 U.S. at 414), but the mere availability of harmless-error review hardly excuses the Government from having to defend against an alleged legal error in the first place.

That point leads directly to the United States' final, and equally unavailing, argument against review: that "this case is a poor vehicle to address whether proof of materiality is required for a conviction under Section 1425(a) because petitioner's misstatements to immigration officials plainly were material." Opp. 16. That argument is based on both an unwarranted assumption about the law and a distorted depiction of the record.

The United States assumes that the appropriate standard for materiality under § 1425(a) is the standard set forth in *United States v. Neder*, 527 U.S. 1, 16 (1999) ("In general, a false statement is material if it has a natural tendency to influence, or is capable of influencing, the decision of the decisionmaking body to which it is addressed.") (internal quotation omitted). But *Neder* did not involve § 1425(a), and the Ninth Circuit has held that its general materiality standard does not apply in the specific § 1425(a) context. *See Alferahin*, 433 F.3d at 1155 ("Building on *Kungys*, we held in *Puerta* that the prohibition under 18 U.S.C. § 1425(a) on the procurement of citizenship 'contrary to law'

incorporated not only a requirement of materiality, but the unique definition of materiality articulated in Justice Brennan's controlling opinion in *Kungys*.").

In any event, the United States' harmless-error argument is based on a wholly one-sided and misleading depiction of the record. The United States baldly asserts, as if it were an undisputed fact, that petitioner and her family feared persecution in Bosnia, and thus sought refugee status, "*because* her husband ... did not serve in the Bosnian Serb army during the civil war." *Id.* at 2 (emphasis added); *see also id.* at 18 (same). The United States further asserts that petitioner and her family were granted refugee status in the United States "[b]ased on those representations." *Id.* at 2.

But, as explained in the petition, that is the heart of the controversy here. Notwithstanding the United States' assertions, the record contains ample evidence that petitioner and her family sought and obtained refugee status because they feared ethnic persecution by Muslims in Bosnia. Indeed, the immigration official who interviewed petitioner and her family in 1998 testified below that the basis for petitioner's claim of refugee status for her family was that "because they were ethnic Serbs, they had been forced to flee their home—the place that they lived in Bosnia, and that they were not able to go back because they feared, basically, for their life, which was plausible." Pet. App. 56a; *see also id.* at 57a ("[T]hey said that they were threatened and forced to leave because of their ethnicity ... because Muslims forced them out."); *id.* at 58a (noting "their fear that they would be mistreated on account of their ethnicity if they returned back to their home"); *id.*

("[They] left because they were threatened by the ethnic Muslims, and ... people were shooting at their home, ... [and] they were told to leave or else they would be harmed."); *id.* at 64a (Trial Exhibit 26) (stating that petitioner and her family "fear maltreatment on account of their ethnicity if they return to their home village").

The jury understood that the nub of the factual dispute here was the basis for petitioner's claim of refugee status. Thus, during deliberations, the jury sent the court a note asking "What was [petitioner's] refugee status granted on? Fear of not serving? Or fear of ethnic backlash[?]" *Id.* at 90a. The court answered that question by telling the jurors that those were questions for them to decide: "You must make your decision based only on the evidence you saw and heard here in court. ... You may also rely on your collective memories. ... You have now what you need to decide the case." *Id.* at 89a. There is no way of telling from the general verdict in this case how the jurors ultimately decided that issue, or whether they decided it at all; the jury instructions and the verdict form certainly did not require them to do so. *See* Pet. App. 83-89a, 91-92a.

This Court should not allow the United States to evade review of the circuit conflict presented here based on a preemptive harmless-error argument that rests on an unwarranted assumption about the law and a one-sided and misleading depiction of the evidence. If this Court were to grant review and rule in petitioner's favor, the United States would be entitled to pursue its harmless-error argument on remand. *See, e.g.*, *Skilling*, 561 U.S. at 414. But, as noted above, the availability of such an argument

does not excuse the Government from having to defend against an alleged legal error in the first place. *See id.*

The bottom line here is that the United States does not, and cannot, deny that the circuits are divided on an important and recurring question of federal law squarely presented here. Indeed, the United States does not, and cannot, deny that the United States itself has taken inconsistent positions on the issue presented here—including in this very case. *See* Pet. App. 25-26a. Accordingly, this Court should grant review.

CONCLUSION

For the foregoing reasons and those set forth in the petition, the Court should grant certiorari.

December 2, 2016

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IN THE
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Petitioner,

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UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

JOINT APPENDIX

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General Docket
United States Court of Appeals for the Sixth Circuit

Court of Appeals **Docket #: 14-3864** USA v. Divna Maslenjak **Appeal From:** Northern District of Ohio at Cleveland **Fee Status:** In Forma Pauperis	**Docketed:** **09/04/2014** **Termed:** **04/07/2016**
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UNITED STATES OF AMERICA
Plaintiff - Appellee

v.

DIVNA MASLENJAK
Defendant - Appellant

09/04/2014	□ 1 3 pg, 12.58 KB	Criminal Case Docketed. Notice filed by Appellant Divna Maslenjak. Transcript needed: y. (MMD)
09/04/2014	□ 2	The case manager for this case is: Michelle Davis (MMD)
09/04/2014	□ 3 1 pg, 81.71 KB	APPEARANCE filed for Appellee USA by Daniel R. Ranke. Certificate of Service: 09/04/2014. (DRR)

09/10/2014	□ 4 1 pg, 26.06 KB	APPEARANCE filed for Appellant Divna Maslenjak by Peter T. Cahoon. Certificate of Service: 09/10/2014. (PTC)
10/07/2014	□ 5 0 pg, 0 KB	Pre-sentence report filed. (KAL)
10/23/2014	□ 6 1 pg, 49.62 KB	Copy of District Court Order filed granting in forma pauperis and request that the court of appeals appoint counsel. RE#54 (MMD)
03/10/2015	□ 7 2 pg, 86.14 KB	RULING LETTER SENT to appoint Mr. Jeffrey Nye for Divna Maslenjak, under the Criminal Justice Act. The appearance form and the transcript order forms are to be electronically filed by 03/24/2015. (KAL)
03/13/2015	□ 8 1 pg, 82.89 KB	APPEARANCE filed for Appellant Divna Maslenjak by Jeff Nye. Certificate of Service: 03/13/2015. (JN)
03/13/2015	□ 9 2 pg, 487.11 KB	TRANSCRIPT ORDER FORM filed by Mr. Jeffrey Nye for Divna Maslenjak; transcript ordered on 03/13/2015 from Court Reporter Ms. Mary L. Uphold. [9] Certificate of Service: 03/13/2015. (JN)

03/18/2015	□ 10	TRANSCRIPT ORDER financial arrangements confirmed by Ms. Mary L. Uphold for Document [9] transcript filed by Mr. Jeffrey Nye and Ms. Mary L. Uphold in 14-3864. Date Made:03/16/2015; Est. pp.: 895. Per notice from DC (ALM)
03/18/2015	□ 11 1 pg, 65.17 KB	TRANSCRIPT ORDER FORM filed by Mr. Daniel R. Ranke for USA; transcript ordered on 03/18/2015 from Court Reporter Ms. Mary L. Uphold. [11] Certificate of Service: 03/18/2015. (DRR)
03/31/2015	□ 12	TRANSCRIPT ORDER completed by Court Reporter Ms. Mary L. Uphold for Document [11] transcript filed by Mr. Daniel R. Ranke and Ms. Mary L. Uphold in 14-3864 , [9] transcript filed by Mr. Jeffrey Nye and Ms. Mary L. Uphold in 14- 3864. Date Hearing Held: 4/14-17/14, 8/7/14. Per notice from DC filed 3/27/15 (ALM)
04/01/2015	□ 13 5 pg, 18.09 KB	BRIEFING LETTER SENT setting briefing schedule: appellant brief due 05/14/2015;. appellee brief due 06/16/2015; (MMD)

05/11/2015	□ 14 6 pg, 110.42 KB	MOTION filed by Mr. Jeffrey Nye for Divna Maslenjak to extend time to file brief, to extend time to file appendix. Certificate of Service: 05/11/2015. (JN)
05/12/2015	□ 15 5 pg, 17.35 KB	RULING LETTER SENT granting motion to extend time to file brief [14] filed by Mr. Jeffrey Nye.; granting motion to extend time to file appendix [14] filed by Mr. Jeffrey Nye., resetting briefing schedule: appellant brief now due 05/21/2015. appellee brief now due 06/22/2015. (MMD)
05/21/2015	□ 16 1 pg, 82.84 KB	APPEARANCE filed for Appellant Divna Maslenjak by Gregory L. Skidmore. Certificate of Service: 05/21/2015. (GLS)
05/21/2015	□ 17 60 pg, 127.75 KB	APPELLANT BRIEF filed by Mr. Jeffrey Nye for Divna Maslenjak. Certificate of Service:05/21/2015. Argument Request: requested. (JN)
05/21/2015	□ 18 23 pg, 9.35 MB	APPENDIX filed by Mr. Jeffrey Nye for Divna Maslenjak. Volume: 1; Pages: 1 - 21. Certificate of Service: 05/21/2015. (JN)
06/17/2015	□ 19 51 pg, 141.71 KB	APPELLEE BRIEF filed by Mr. Daniel R. Ranke for USA. Certificate of Service:06/17/2015. Argument Request: waived. (DRR)

06/19/2015	□ 20 6 pg, 92.08 KB	MOTION filed by Mr. Jeffrey Nye for Divna Maslenjak to extend time to file brief. Certificate of Service: 06/19/2015. (JN)
06/22/2015	□ 21 5 pg, 17.48 KB	RULING LETTER SENT granting motion to extend time to file reply vbrief [20] filed by Mr. Jeffrey Nye., resetting briefing schedule:, reply brief due 7/13/15 (MMD)
07/13/2015	□ 22 28 pg, 62.19 KB	REPLY BRIEF filed by Attorney Mr. Jeffrey Nye for Appellant Divna Maslenjak. Certificate of Service: 07/13/2015. (JN)
08/25/2015	□ 23 2 pg, 13.31 KB	Oral argument date set for 9:00 a.m. on Thursday, October 8, 2015. Notice of argument sent to counsel on 08/25/2015. (LAG)
08/25/2015	□ 24 1 pg, 73.31 KB	Oral argument acknowledgment filed by Attorney Mr. Daniel R. Ranke for Appellee USA. Certificate of Service: 08/25/2015. (DRR)
09/18/2015	□ 25 1 pg, 82.83 KB	APPEARANCE filed for Appellant Divna Maslenjak by Patrick Haney. Certificate of Service: 09/18/2015. (PH)
09/18/2015	□ 26 1 pg, 25.38 KB	Oral argument acknowledgment filed by Attorney Mr. Patrick Haney for Appellant Divna Maslenjak. Certificate of Service: 09/18/2015. (PH)

10/08/2015	□ 27 1 pg, 12.33 KB	CAUSE ARGUED by Mr. Patrick Haney for Appellant Divna Maslenjak and Mr. Daniel R. Ranke for Appellee USA before Gibbons, Circuit Judge; McKeague, Circuit Judge and Anderson, U.S. District Judge. (DTS)
04/07/2016	□ 28 29 pg, 236.16 KB	OPINION and JUDGMENT filed: The judgment of the district court is AFFIRMED. Decision for publication. Julia Smith Gibbons (CONCURRING) and David W. McKeague, Circuit Judges; S. Thomas Anderson (AUTHORING), U.S. District Judge for the Western District of Tennessee, sitting by designation. (CL)
04/21/ 2016	□ 29 48 pg, 184.32 KB	PETITION for en banc rehearing filed by Mr. Gregory L. Skidmore for Divna Maslenjak. Certificate of Service: 04/21/2016. (GLS)
05/02/2016	□ 30 1 pg, 10.11 KB	LETTER SENT to Mr. Daniel R. Ranke for USA, notifying that he is directed to respond to petition for en banc rehearing filed by Mr. Gregory L. Skidmore. Response due 05/16/2016. (BLH)

05/10/2016	▫ 31 15 pg, 46.79 KB	RESPONSE to petition for en banc rehearing, [29], previously filed by filed by Mr. Gregory L. Skidmore in 14-3864. Response filed by Mr. Daniel R. Ranke for USA. Certificate of service: 05/10/2016. (DRR)
05/27/2016	▫ 32 2 pg, 74.93 KB	ORDER filed denying petition for en banc rehearing [29] filed by Mr. Gregory L. Skidmore. Julia Smith Gibbons and David W. McKeague, Circuit Judges; and S. Thomas Anderson, District Judge. (BLH)
06/06/2016	▫ 33 2 pg, 10.98 KB	MANDATE ISSUED with no costs taxed. (MMD)
09/16/2016	▫ 34 1 pg, 69.22 KB	U.S. Supreme Court notice filed regarding a petition for a writ of certiorari filed by Appellant Divna Maslenjak. Supreme Court Case No:16-309, 09/08/2016. (CL)
01/17/2017	▫ 35 1 pg, 78.4 KB	U.S. Supreme Court letter filed granting the petition for a writ of certiorari [34] filed by Divna Maslenjak.. Supreme Court Case No: 16-309, 01/13/2017.. (CL)

Burke,Interpreter,Termed

U.S. District Court
Northern District of Ohio (Cleveland)
CRIMINAL DOCKET FOR CASE #: 1:13-cr-00126-BYP-1

Case title: United States of America v. Maslenjak

Date Filed: 03/05/2013
Date Terminated: 08/15/2014

Assigned to: Judge Benita Y. Pearson
Appeals court case number: 14-3864 6th Circuit

Defendant (1)

Divna Maslenjak
Serbian interpreter required
TERMINATED: 08/15/2014

represented by

Peter T. Cahoon
Buckingham, Doolittle & Burroughs - Akron
Ste. 300
3800 Embassy Parkway
P.O. Box 1500
Akron, OH 44333
330-258-6534
Fax: 330-252-5534
Email: pcahoonf@bdblaw.com
TERMINATED: 03/11/2015
Designation: Retained

Pending Counts

18:1425(a); Naturalization Fraud (1)

Disposition

Defendant sentenced to a two year term of probation as to each of Counts 1 and 2 of the Indictment, such terms to be served concurrently, with standard and special conditions of supervision imposed. The Court waives the fine in this case. Defendant shall pay a $200.00 special assessment as to Counts 1 and 2 of the Indictment, which is due immediately.

18:1423; Misuse of Evidence of Naturalization (2)

Defendant sentenced to a two year term of probation as to each of Counts 1 and 2 of the Indictment, such terms to be served

concurrently, with standard and special conditions of supervision imposed. The Court waives the fine in this case. Defendant shall pay a $200.00 special assessment as to Counts 1 and 2 of the Indictment, which is due immediately.

Highest Offense Level (Opening)
Felony

Terminated Counts | **Disposition**
None

Highest Offense Level (Terminated)
None

Complaints | **Disposition**
None

Plaintiff
United States of America represented by

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

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Email: margaret.sweeney@.usdoj.gov *TERMINATED: 12/04/2013*
ATTORNEY TO BE NOTICED Designation: Retained

Date Filed	#	Docket Text
03/05/2013	1	**Indictment** filed by USA as to Divna Maslenjak (1) count(s) 1, 2. (Attachments: # 1 Designation Form and Foreperson Signature Page) (R,Sh) (Entered: 03/05/2013)
03/05/2013		Random Assignment of Magistrate Judge pursuant to Local Criminal Rule 57.9. In the event of a referral, case will be assigned to Magistrate Judge Burke. (R,Sh) (Entered: 03/05/2013)
03/07/2013	2	Notice of Appearance of Attorney Margaret A. Sweeney appearing for USA. *as Co-counsel* (Sweeney, Margaret) (Entered: 03/07/2013)
03/18/2013	3	**IMPORTANT:** Notice (SUMMONS) as to Divna Maslenjak. Arraignment set for 3/28/2013 at 10:30 AM in Courtroom 9B before Magistrate Judge Kenneth S. McHargh.(R,N) (Entered: 03/18/2013)
03/18/2013		Copy of 3 SUMMONS and 1 Indictment mailed to Ms. Divna

		Malsenjak at address listed on docket on 3/18/13. (R,N) (Entered: 03/18/2013)
03/26/2013	4	**IMPORTANT**: Notice as to Divna Maslenjak. The Arraignment set for 3/28/13 has been rescheduled and will be held on 3/29/2013 at 11:00 AM in Courtroom 9B before Magistrate Judge Kenneth S. McHargh. (R,N) (Entered: 03/26/2013)
03/26/2013		Copy of 4 Notice of Hearing or Conference mailed to Ms. Divna Maslenjak at address listed on docket on 3/26/13. The Courtroom Deputy also contacted Ms. Maslenjak by telephone and left a message for her regarding the date change. (R,N) (Entered: 03/26/2013)
03/29/2013	5	Notice of Appearance of Attorney - Peter T. Cahoon appearing for Divna Maslenjak (Cahoon, Peter) (Entered: 03/29/2013)
03/29/2013		**Minutes of proceedings** [non-document] before Magistrate Judge Kenneth S. McHargh. An Arraignment as to Divna Maslenjak (1) Count 1,2 held on 3/29/2013. AUS A Philip Tripi present for the government; Attorney Peter Cahoon present and retained by defendant. Serbian Interpreter Alma Thome also present for the defendant. Defendant waived the reading of the indictment and plead not guilty. Defendant to be released on

		a $10,000 unsecured appearance bond with conditions outlined. (Court Reporter: ECRO (S. Marshal)) Time: 25 minutes. (R,N) (Entered: 03/29/2013)
03/29/2013	6	Appearance Bond Entered as to Divna Maslenjak in amount of $ 10,000, unsecured. Approved by Magistrate Judge Kenneth S. McHargh (R,N) (Entered: 03/29/2013)
03/29 non	7	**Order** Setting Conditions of Release as to Divna Maslenjak (1) $10,000 unsecured appearance bond. Signed by Magistrate Judge Kenneth S. McHargh on 3/29/13. (R,N) (Entered: 03/29/2013)
05/02/2013	8	**Criminal Pretrial and Trial Order** as to Defendant Divna Maslenjak: Discovery shall be completed by 5/6/2013; Pretrial Motions shall be filed by 5/13/2013 and Responses shall be filed by 5/20/2013; A Final Pretrial Conference is set for 5/21/2013 at 2:00 PM in Courtroom 351 before Judge Benita Y. Pearson and a Jury Trial is set for 6/3/2013 at 9:00 AM in Courtroom 351 before Judge Benita Y. Pearson. Judge Benita Y. Pearson 5/2/2013. (R,Li) (Entered: 05/02/2013)
05/02/2013		Set hearings as to Defendant Divna Maslenjak. Final Pretrial Conference set for 5/21/2013 at 02:00 PM in Courtroom 351 before Judge Benita Y. Pearson. Jury Trial set for 6/3/2013 at 09:00 AM

		in Courtroom 351 before Judge Benita Y. Pearson.(R,Li) (Entered: 05/02/2013)
05/13/2013	9	**Motion** to continue Pretrial and Trial Dates and Extension of Time to File Pretrial Motions */Time Waiver of Defendant* by Divna Maslenjak. (Cahoon, Peter) (Entered: 05/13/2013)
05/17/2013		**Order** [non-document] denying 9 Motion to continue Pretrial and Trial Dates and Extension of Time to File Pretrial Motions as to Defendant Divna Maslenjak. The final Pretrial will occur as scheduled, and counsel can address the continuance again during that proceeding. Dates for filing pretrial motions is suspended until after the final pretrial hearing which will occur on 5/21/2013. Judge Benita Y. Pearson on 5/17/2013. (JLG) (Entered: 05/17/2013)
05/21/2013		**Minutes of proceedings** [non-document] before Judge Benita Y. Pearson; Final Pretrial Conference as to Defendant Divna Maslenjak held on 5/21/2013; Assistant U.S. Attorney Phillip J. Tripi was present as counsel for the Government; Defendant Divna Maslenjak was present and represented by Attorney Peter T. Cahoon; Serbian Interpreter Alma Thome was also present; the Defendant's Motion to Continue Pretrial and Trial (ECF No. 9) was

		revisited; based upon the reasons stated on the record, the Trial is rescheduled for 12/16/2013 at 9:00 a.m.; the Defendant continues to be released on bond; (Court Reporter: Mary Uphold) Time: 15 Minutes. (JLG) (Entered: 05/21/2013)
05/21/2013	10	**Order** to Continue - Ends of Justice as to Defendant Divna Maslenjak. The trial in this case is rescheduled for 12/16/2013 at 9:00 a.m. A final pretrial conference shall be held on 11/14/2013 at 1:00 p.m. Judge Benita Y. Pearson on 5/21/2013. (JLG) (Entered: 05/21/2013)
11/13/2013	11	**Motion** to continue Final Pretrial and Trial by Divna Maslenjak. (Cahoon, Peter) Modified to term motion event on 11/13/2013 (JLG). (Entered: 11/13/2013)
11/13/2013	12	**Order** to Continue - Ends of Justice as to Defendant Divna Maslenjak. For the reasons set forth herein, the Final Pretrial Conference is reset for 2/4/2014 at 1:00 p.m. and the Jury Trial is reset for 2/17/2014 at 9:00 a.m. in Courtroom 351 before Judge Benita Y. Pearson. The Criminal Pretrial and Trial Order previously issued, ECF No. 8, remains in effect in all other respects. All new due dates shall be calculated by counsel so that the parties comply with the time frames set by the Criminal

		Pretrial and Trial Order in addition to all other obligations imposed by that order. Judge Benita Y. Pearson on 11/13/2013. (JLG) Related document(s) 11 . Modified to create link on 11/13/2013 (JLG). (Entered: 11/13/2013)
11/27/2013	13	**IMPORTANT:** Notice as to Defendant Divna Maslenjak. Jury Trial reset for 2/18/2014 at 9:00 a.m. in Courtroom 351 before Judge Benita Y. Pearson. (JLG) (Entered: 11/27/2013)
12/04/2013	14	Notice of Substitution of Attorney. Margaret A. Sweeney removed from case, Adam Hollingsworth appearing for USA.(Hollingsworth, Adam) (Entered: 12/04/2013)
02/04/2014		**Minutes of proceedings** [non-document] before Judge Benita Y. Pearson. Final Pretrial Conference as to Defendant Divna Maslenjak held on 2/4/2014. Defendant Divna Maslenjak was present and represented by Attorney Peter T. Cahoon; Assistant U.S. Attorney Adam Hollingsworth was present on behalf of the Government; and Serbian Interpreter Alma Thome was also present. Defense counsel moved for a continuation of the Trial date. The Court finds that the ends of justice served by granting the Defendant's oral motion to continue in the instant matter outweighs the best interests of the public and

		Defendant in proceeding more speedily. The motion to continue the 2/18/2014 Trial date is granted, and the matter is reset for Trial beginning on 4/14/2014 at 9:00 a.m., with a Pretrial set for 3/27/2014 at 1:00 p.m. The Criminal Pretrial and Trial Order previously issued, ECF No. 8, remains in effect in all other respects. All new due dates shall be calculated by counsel so that the parties comply with the time frames set by the Criminal Pretrial and Trial Order in addition to all other obligations imposed by that order. (Court Reporter: Mary Uphold); Time: 6 Minutes. (JLG) (Entered: 02/04/2014)
03/11/2014	15	Unopposed **Motion** to continue Pretrial Conference *or Reschedule to March 26, 2014*, by United States of America as to Divna Maslenjak. (Hollingsworth, Adam) (Entered: 03/11/2014)
03/19/2014		**Order** [non-document] denying as requested, in part, 15 Unopposed Motion to Continue Pretrial Conference as to Defendant Divna Maslenjak. Final Pretrial Conference reset for 4/8/2014 at 1:30 p.m. in Courtroom 351 before Judge Benita Y. Pearson. Judge Benita Y. Pearson on 3/19/2014. (JLG) (Entered: 03/19/2014)
03/21/2014	16	**IMPORTANT:** Notice as to Defendant Divna Maslenjak. Final

		Pretrial Conference reset for 4/1/2014 at 12:00 p.m. in Courtroom 351 before Judge Benita Y. Pearson. Trial remains set for 4/14/2014 at 9:00 a.m. (JLG) (Entered: 03/21/2014)
04/01/2014		**Minutes of proceedings** [non-document] before Judge Benita Y. Pearson. Final Pretrial as to Defendant Divna Maslenjak held on 4/1/2014. Defendant Divna Maslenjak was present and represented by Attorney Peter T. Cahoon; Assistant U.S. Attorney Adam Hollingsworth was present as counsel for the Government; and Serbian Interpreter Alma Thome was also present. Defendant intends to fde timely motions by 4/4/2014, with the Government to file responses by 4/11/2014 or, if necessary, counsel shall confer and file with the Court an ends of justice motion for a continuance of the 4/14/2014 Trial date. Case remains set for Trial on 4/14/2014 at 9:00 a.m. (Court Reporter: Mary Uphold); Time: 10 Minutes. (JLG) (Entered: 04/01/2014)
04/04/2014	17	Proposed Jury Instructions by United States of America as to Divna Maslenjak (Hollingsworth, Adam) (Entered: 04/04/2014)
04/04/2014	18	Proposed Voir Dire by United States of America as to Divna Maslenjak (Hollingsworth, Adam) (Entered: 04/04/2014)

04/04/2014	19	Notice *of Filing Joint Preliminary Statement* as to Divna Maslenjak (Hollingsworth, Adam) (Entered: 04/04/2014)
04/04/2014	20	Trial Brief by Divna Maslenjak (Cahoon, Peter) (Entered: 04/04/2014)
04/04/2014	21	**Motion** in Limine by Divna Maslenjak. (Attachments: # 1 Exhibit A - Refugee Application Worksheet (Government Exhibit 11), # 2 Exhibit B - Excerpt of Trial Proceedings (USA v. Ratko Maslenjak))(Cahoon, Peter) (Entered: 04/04/2014)
04/04/2014	22	Trial Brief by United States of America as to Divna Maslenjak (Hollingsworth, Adam) (Entered: 04/04/2014)
04/09/2014	23	Witness List by Divna Maslenjak (Cahoon, Peter) (Entered: 04/09/2014)
04/09/2014	24	Witness List by United States of America as to Divna Maslenjak (Hollingsworth, Adam) (Entered: 04/09/2014)
04/11/2014	25	**Response** by United States of America in opposition to **Motion** in Limine 21 as to Divna Maslenjak (Hollingsworth, Adam) (Entered: 04/11/2014)
04/11/2014	26	Notice *of Objection to Witnesses* as to Divna Maslenjak (Hollingsworth, Adam) (Entered: 04/11/2014)
04/11/2014	27	Defendant's Objections to Government's Witness/Exhibit List 24 (Cahoon, Peter) Modified

		text on 4/21/2014 (S,L). (Entered: 04/11/2014)
04/14/2014		**Minutes of proceedings** [non-document] before Judge Benita Y. Pearson. Jury Trial as to Defendant Divna Maslenjak held on 4/14/2014. Defendant Divna Maslenjak was present and represented by Attorney Peter T. Cahoun; Assistant U.S. Attorneys Adam Hollingsworth and Phillip J. Tripi were present on behalf of the Government; and Alma Thorne was present as Interpreter. The Court issued its ruling on Defendant's Motion in Limine (ECF No. 21). Regarding the work sheet of notes prepared by Monica Rahmeyer, the document can be used to refresh Ms. Rahmeyer's recollection and she can rely upon it, but it cannot be published to the juiy as an exhibit. The Government is not permitted to make any reference to Mr. Maslenjak's criminal charges or conviction, but it can introduce evidence of his pending deportation and its relevance with respect to Count 2 in this case. The Court was satisfied with the Government's proffer of authenticity with respect to the documents obtained from the ICTY, and the Government is permitted to introduce evidence as to their source and their reliability. Finally, the

		Government will refrain from making any reference to Mr. Maslenjak's statements regarding his own military service that he gave in an interview with government agents, and can approach the Court if the Government desires to re-raise that issue. The Court overruled the Government's objection to witnesses (ECF No. 26), with the understanding that 404(a)(2)(A) would permit it, but the Court will not permit redundancy. Voir Dire held and jury impaneled. Trial continued until 9:00 a.m. on 4/15/2014. (Court Reporter: Mary Uphold); Time: 5 Hours 20 Minutes. (JLG) (Entered: 04/14/2014)
04/15/2014		**Minutes of proceedings** [non-document] before Judge Benita Y. Pearson. Jury Trial as to Defendant Divna Maslenjak continued on 4/15/2014. Defendant Divna Maslenjak was present and represented by Attorney Peter T. Cahoun; Assistant U.S. Attorneys Adam Hollingsworth and Phillip J. Tripi were present on behalf of the Government; and Alma Thome was present as Interpreter. Testimony and evidence presented. Trial continued until 9:00 a.m. on 4/16/2014. (Court Reporter: Mary Uphold); Time: 4 Hours 30 Minutes. (JLG) (Entered: 04/15/2014)

04/15/2014	28	Stipulation that the documents contained in the Alien Registration Files of Divna and Ratko Maslenjak are authentic filed by United States of America and Defendant Divna Maslenjak. (JLG) (Entered: 04/16/2014)
04/15/2014	29	Stipulation that Government's Exhibit #45 is a true copy of the transcript of Defendant's sworn testimony on 4/28/2009 during a hearing related to Ratko Maslenjak, filed by United States of America and Defendant Divna Maslenjak. (JLG) (Entered: 04/16/2014)
04/16/2014		**Minutes of proceedings** [non-document] before Judge Benita Y. Pearson. Jury Trial as to Defendant Divna Maslenjak continued on 4/16/2014. Defendant Divna Maslenjak was present and represented by Attorney Peter T. Cahoun; Assistant U.S. Attorneys Adam Hollingsworth and Phillip J. Tripi were present on behalf of the Government; and Alma Thome was present as Interpreter. Testimony and evidence presented. The Government rested. Defendant presented testimony and evidence. The Defendant rested. The motions for acquittal made at the close of Government's case and at the close of Defendant's case were denied. Exhibit admission completed. Trial continued until 9:00 a.m. on

		4/17/2014. (Court Reporter: Maiy Uphold); Time: 4 Hours 45 Minutes. (JLG) (Entered: 04/16/2014)
04/17/2014	30	**Order** The jurors will be provided lunch at the Court's expense during their deliberations on 4/17/2014, and continuing until deliberations are complete. Judge Benita Y. Pearson on 4/17/2014. (JLG) (Entered: 04/17/2014)
04/17/2014	31	Final Exhibit List by United States of America as to Defendant Divna Maslenjak. (JLG) (Entered: 04/17/2014)
04/17/2014	32	Certification of Trial Exhibits for Jury Deliberations by United States of America and Defendant Divna Maslenjak. (JLG) (Entered: 04/17/2014)
04/17/2014	33	Jury Verdict Forms as to Defendant Divna Maslenjak (Redacted). (JLG) (Additional attachment(s) added on 4/17/2014: # 1 Jury Verdict Forms - Unredacted) (JLG). (Entered: 04/17/2014)
04/17/2014	34	Jury Note as to Defendant Divna Maslenjak (Redacted). (JLG) (Additional attachment(s) added on 4/17/2014: # 1 Jury Note - Unredacted) (JLG). (Entered: 04/17/2014)
04/17/2014		**Minutes of proceedings** [non-document] before Judge Benita Y. Pearson. Jury Trial as to Defendant Divna Maslenjak continued on 4/17/2014. Defendant

		Divna Maslenjak was present and represented by Attorney Peter T. Cahoun; Assistant U.S. Attorneys Adam Flollingsworth and Phillip J. Tripi were present on behalf of the Government; and Alma Thome was present as Interpreter. Jury Instmctions given. Closing arguments heard. Jury Deliberations begun. Guilty verdicts submitted as to Counts 1 and 2 of the Indictment. Defendant's bond continued. Sentencing set for 8/5/2014 at 10:00 a.m. before Judge Benita Y. Pearson in Courtroom 351, Youngstown, Ohio. Defendant referred to Probation for preparation of a Presentence Investigation Report. (Court Reporter: Mary Uphold) Time: 2 Hours 45 Minutes. (JLG) (Entered: 04/17/2014)
05/01/2014	35	**Motion** for Acquittal (*Renewed*) by Divna Maslenjak. (Cahoon, Peter) (Entered: 05/01/2014)
05/01/2014	36	**Motion** for New Trial by Divna Maslenjak. (Attachments: # 1 Exhibit A - Indictment, # 2 Exhibit B - USA v. Lutz)(Cahoon, Peter) (Entered: 05/01/2014)
05/05/2014	37	**IMPORTANT:** Notice as to Defendant Divna Maslenjak. Sentencing set for 8/5/2014 at 10:00 a.m. in Courtroom 351 before Judge Benita Y. Pearson. (JLG) (Entered: 05/05/2014)
05/08/2014	38	**Response** by United States of

		America in opposition to Motion for Acquittal (*Renewed*) 35 as to Divna Maslenjak (Hollingsworth, Adam) (Entered: 05/08/2014)
05/08/2014	39	**Response** by United States of America in opposition to Motion for New Trial 36 as to Divna Maslenjak (Hollingsworth, Adam) (Entered: 05/08/2014)
06/20/2014	40	**Memorandum of Opinion and Order** For the reasons set forth herein, Defendant's Motions for Acquittal and for New Trial (ECF Nos. 35; 36) are denied. Judge Benita Y. Pearson on 6/20/2014. (JLG) (Entered: 06/20/2014)
07/07/2014	42	**Motion** to *Revoke Citizenship and to Cancel Naturalization Certificate* by United States of America as to Divna Maslenjak. (Tripi, Phillip) Modified to term motion event on 8/12/2014 (JLG). (Entered: 07/07/2014)
08/01/2014	45	**IMPORTANT:** Notice as to Defendant Divna Maslenjak. Sentencing reset for 8/7/2014 at 12:00 p.m. in Courtroom 351 before Judge Benita Y. Pearson. Related document(s) 37. (JLG) (Entered: 08/01/2014)
08/06/2014	46	**Response** to **Motion** to *Revoke Citizenship and to Cancel Naturalization Certificate* 42 as to Divna Maslenjak (Cahoon, Peter) (Entered: 08/06/2014)
08/07/2014		**Minutes of proceedings** [non-document] before Judge Benita Y. Pearson. Sentencing held on

		8/7/2014 as to Defendant Divna Maslenjak. Defendant Divna Maslenjak was present and represented by Attorney Peter T. Cahoon; Assistant U.S. Attorney Adam Hollingsworth was present on behalf of the Government; Alma Thorne was present as Interpreter; and U.S. Pretrial Services and Probation Officer Jennifer Burke was also present. Defendant sentenced to a two year term of probation as to each of Counts 1 and 2 of the Indictment, such terms to be served concurrently, with standard and special conditions of supervision imposed. The Court waives the fine in this case. Defendant shall pay a $200.00 special assessment as to Counts 1 and 2 of the Indictment, which is due immediately. For the reasons stated on the record, the Government's Motion to Revoke Citizenship and to Cancel Naturalization Certificate was granted (ECF No. 42) and Defendant's Motion to Stay was overruled (ECF No. 46); a separate Order will issue. (Court Reporter: Mary Uphold); Time: 1 Hour. (JLG) Modified text and regenerated NEF's on 8/12/2014. (Entered: 08/07/2014)
08/11/2014	48	Proposed Order by United States of America as to Divna Maslenjak 42 **Motion** to *Revoke Citizenship*

		and to Cancel Naturalization Certificate filed by United States of America (Tripi, Phillip) (Entered: 08/11/2014)
08/14/2014	49	**Order**. For the reasons set forth herein, it is ordered that the final order admitting Defendant Divna Maslenjak to citizenship is hereby revoked, set aside and declared void, and her certificate of naturalization is hereby canceled. Defendant Divna Maslenjak shall surrender the certificate of naturalization to the Department of Homeland Security. Judge Benita Y. Pearson on 8/14/2014. Related document(s) 42. (JLG) (Entered: 08/14/2014)
08/15/2014	50	**Criminal Judgment** as to Defendant Divna Maslenjak. Defendant sentenced to a two year term of probation as to each of Counts 1 and 2 of the Indictment, such terms to be served concurrently, with standard and special conditions of supervision imposed. The Court waives the fine in this case. Defendant shall pay a $200.00 special assessment as to Counts 1 and 2 of the Indictment, which is due immediately. Judge Benita Y. Pearson on 8/15/2014. (JLG) (Entered: 08/15/2014)
08/28/2014	51	**NOTICE OF APPEAL** to the Sixth Circuit Court of Appeals from the 50 Judgment of 8/15/14, 49 Order of 8/14/14, filed by Divna

		Maslenjak. (Filing fee of $505 paid, receipt number 0647-6708037) (Cahoon, Peter). Modified text on 8/29/2014 (H,SP). (Entered: 08/28/2014)
08/29/2014		Transmission of Notice of Appeal as to Divna Maslenjak emailed to US Court of Appeals re 51 (H,SP) (Entered: 08/29/2014)
09/05/2014	52	Acknowledgment from USCA for the Sixth Circuit of receipt of 51 Notice of Appeal as to Divna Maslenjak (USCA# 14-3864). Date filed in USCA 9/4/14. (H,SP) (Entered: 09/05/2014)
09/17/2014	53	**Motion** *for Pauper Status and to Appoint Counsel* as to Divna Maslenjak (Attachments: # 1 Affidavit /Financial of Defendant)(Cahoon, Peter) Modified text and created motion event on 10/2/2014 (S,L). (Entered: 09/17/2014)
10/16/2014	54	**Order** granting 53. Motion for Pauper Status and to Appoint Counsel as to Defendant Divna Maslenjak. The Court requests the Court of Appeals to appoint counsel to represent the Defendant on appeal. Judge Benita Y. Pearson on 10/16/2014. (JLG) (Entered: 10/16/2014)
03/11/2015	55	Appeal Remark from USCA for the Sixth Circuit: Jeff Nye appointed to represent Divna Maslenjak re 51 Notice of Appeal (USCA# 14-3864) (H,SP) (Entered: 03/11/2015)
03/16/2015	56	Transcript Request by Divna

		Maslenjak for proceedings held on all trial related proceedings, including all testimony and all colloquy between the judge and attorneys (April 14, 15, 16, and 17 of 2014). Also sentencing held on August 8, 2014 before Judge Pearson, re 51 Notice of Appeal - Final Judgment. Court Reporter: Mary L. Uphold. Transcript required for appeal. (Attachments: # 1 Exhibit CJA Form 24)(S,CK) (Entered: 03/16/2015)
03/17/2015		Transcript Order as to Divna Maslenjak received by court reporter Mary L. Uphold. Estimated number of pages: Trial = 850 and sentencing = 45. Related Document 56 Transcript Order received on 3/16/2015. Financial arrangements made on 3/16/2015. Estimated completion date is 4/15/2015. (Uphold, Mary) (Entered: 03/17/2015)
03/18/2015	57	Non-Appeal Transcript Request *of Trial and Sentencing Hearing* by United States of America as to Divna Maslenjak for proceedings held on 4/14 - 4/17/14 and 8/8/14 before Judge Benita Y. Pearson. Court Reporter: Mary Uphold. Requested completion date: Within 30 Days (Ranke, Daniel) (Entered: 03/18/2015)
03/27/2015	58	Transcript of Jury Voir Dire as to Divna Maslenjak held on 4/14/14 before Judge Benita Y. Pearson. To obtain a bound copy of this

		transcript please contact court reporter Mary L. Uphold at (330) 884-7424 [226 pages]. Related Document 56, 57. (Uphold, Mary) (Entered: 03/27/2015)
03/27/2015	59	Transcript of Jury Trial - Volume I filed as to Divna Maslenjak for date of 4/14/14 before Judge Benita Y. Pearson, re 56 Transcript Request - Appeal, 57 Transcript Request, Court Reporter Mary L. Uphold, Telephone number (330) 884-7424 [pages 1-40], Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Parties requesting that privacy information be redacted must file a notice of intent to redact with the court by 4/3/2015. Redaction Request due 4/17/2015. Redacted Transcript Deadline set for 4/27/2015. Release of Transcript Restriction set for 6/25/2015. (Uphold, Mary) (Entered: 03/27/2015)
03/27/2015	60	Transcript of Jury Trial - Volume II filed as to Divna Maslenjak for date of 4/15/14 before Judge Benita Y. Pearson, re 56 Transcript Request - Appeal, 57 Transcript Request, Court Reporter Mary L. Uphold, Telephone number (330) 884-7424

		[pages 41-303 (263 total)]. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Parties requesting that privacy information be redacted must file a notice of intent to redact with the court by 4/3/2015. Redaction Request due 4/17/2015. Redacted Transcript Deadline set for 4/27/2015. Release of Transcript Restriction set for 6/25/2015. (Uphold, Mary) (Entered: 03/27/2015)
03/27/2015	61	Transcript of Jury Trial - Volume III filed as to Divna Maslenjak for date of 4/16/14 before Judge Benita Y. Pearson, re 56 Transcript Request - Appeal, 57 Transcript Request, Court Reporter Mary L. Uphold, Telephone number (330) 884-7424 [pages 304-508 (205 total)]. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Parties requesting that privacy information be redacted must file a notice of intent to redact with the court by 4/3/2015. Redaction

		Request due 4/17/2015. Redacted Transcript Deadline set for 4/27/2015. Release of Transcript Restriction set for 6/25/2015. (Uphold, Mary) (Entered: 03/27/2015)
03/27/2015	62	Transcript of Jury Trial - Volume IV filed as to Divna Maslenjak for date of 4/17/14 before Judge Benita Y. Pearson, re 56 Transcript Request - Appeal, 57 Transcript Request, Court Reporter Mary L. Uphold, Telephone number (330) 884-7424 [pages 509-618 (110 total)]. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Parties requesting that privacy information be redacted must file a notice of intent to redact with the court by 4/3/2015. Redaction Request due 4/17/2015. Redacted Transcript Deadline set for 4/27/2015. Release of Transcript Restriction set for 6/25/2015. (Uphold, Mary) (Entered: 03/27/2015)
03/27/2015	63	Transcript of Sentencing filed as to Divna Maslenjak for date of 8/7/14 before Judge Benita Y. Pearson, re 56 Transcript Request - Appeal, 57 Transcript Request, Court Reporter Mary L. Uphold,

		Telephone number (330) 884-7424 [43 pages]. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Parties requesting that privacy information be redacted must file a notice of intent to redact with the court by 4/3/2015. Redaction Request due 4/17/2015. Redacted Transcript Deadline set for 4/27/2015. Release of Transcript Restriction set for 6/25/2015. (Uphold, Mary) (Entered: 03/27/2015)
04/09/2015		CJA 24 as to Divna Maslenjak: Authorization to Pay Mary L. Uphold for Transcript of trial/sentencing, requested by Atty Jeff Nye. Signed by Judge Benita Y. Pearson on 3/30/15. (K,J) (Entered: 04/09/2015)
06/07/2016	65	True Copy of mandate from USCA for the Sixth Circuit: Affirming the District Court's judgment as to Divna Maslenjak (1) re 51 Notice of Appeal (USCA# 14-3864). Date issued as mandate 6/6/16, Costs: None (H,SP) (Entered: 06/07/2016)
09/20/2016	66	Appeal Remark from US Supreme Court: The petition for a writ of certiorari as to Divna Maslenjak (1) was filed on 9/8/16 and placed on the docket 9/9/16 as No. 16-309 (H,SP) (Entered: 09/20/2016)

01/18/2017	67	Appeal Order from US Supreme Court: Granting the petition for a writ of certi orari as to Divna Maslenjak (1) re 66 (No. 16-309) (H,SP) (Entered: 01/18/2017)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

DIVNA MASLENJAK,
Defendant.

Case No. 1:13-cr-126
Youngstown, Ohio
Tuesday, April 15, 2014
8:50 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE
BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

JURY TRIAL
* * *

[DIRECT EXAMINATION OF TODD GARDNER]

* * *

Q. Okay. And you've indicated that you were processing these. What is — are you familiar with the term "refugee" as it is used in the United States immigration laws?

A. Oh, yes, I am. The term "refugee" is defined by the Immigration and Nationality Act in what is known as Section 101(a) (42), and it defines a refugee.

It's a long definition, but to paraphrase it, anyone who is outside of their country and has fled their country because they've suffered past persecution or they have a well-founded fear of persecution and can't return to their country because of that. And the basis of that persecution or that fear has to be on account of one of five grounds.

And those grounds are: race, religion, nationality, membership of a particular social group, or political opinion.

On rare occasions, we do process refugees that are still in their country, but those have been limited to a tiny number of countries.

And then also, there's another portion of the definition that denies refugee — denies refugee status to an individual if they've committed acts of persecution on the basis of those same five grounds I mentioned.

Q. Okay. And would that be a statutory bar to qualifying as a definition of "refugee," if one engaged in persecution?

A. Yes.

Q. With regard to — are you familiar with the Bosnian War displaced individuals; and specifically, although you didn't handle them yourself, are you familiar with the fact that Serbian ethnicity Bosnians were seeking refugee status with the United States?

A. Oh, absolutely. And, in fact, some of the cases that I was involved in involved Bosnian Serbs, too.

Q. They did? Okay.

A. They did, yes.

Q. And can you tell us, how does a person apply to become a refugee with the United States of America?

A. Okay. How a person applies is a little bit of a complicated process, because it's very different from most immigration processes.

In most immigration processes, an individual can obtain a form, fill it out, submit it and it starts the process. But the I-590 is not a form that's available to the public. It's only available to individuals that the State Department determines are of special humanitarian concern to the United States.

So each year what happens is the State Department determines which groups of individuals throughout the world or which types of populations they will invite to submit an I-590. The I-590 is the application.

And each year when that determination is made, basically what happens is the State Department has contractors all around the world that set up offices in these various countries. And the staff from these offices then will reach out to, whether it's a refugee camp or a population, and they will make it known that individuals that fall within these groups or categories then can come forward to their office and seek refugee resettlement.

Q. Does everyone who meets the definition of being a refugee get an opportunity to be admitted to the United States?

A. Well, all of the rules around refugee admissions is found in the Immigration and Nationality Act under a section called Section 207. And in that section, there are four prongs that a person must meet, or four prongs or conditions that a person must meet in order to be admitted to the United States as a refugee.

One I've already mentioned is that special humanitarian concern that the State Department establishes.

The second one is the refugee definition. So they have to meet that definition.

The third is that they can't already have some kind of immigration status in a third country. So —

And the last is they have to be what we call otherwise admissible to the United States. And what that means is they can't be inadmissible due to many of the grounds found in the Immigration and Nationality Act, specifically Section 212.

Q. Okay. So when we're talking about inadmissible, there are a series of grounds that the United States has set forth in law that limit a person from coming to the United States based on certain disqualifying factors?

A. That is correct. And this isn't — these disqualifying factors aren't limited to the refugee process. It's applied broadly to immigration.

But they include numerous things, anywhere from the commission of serious crimes, all the way to medical conditions, to, you know, if they commit fraud or misrepresentation or anything like that. So —

Q. So would it be fair to say that the same disqualifications would apply to a person seeking to visit the United States or attend here as a student, say, as compared to a refugee?

A. That's my understanding.

Q. All right. In 1998, were Bosnians being displaced as a result of the previous Civil War?

A. I'm sorry, what year is that?

Q. 1998.

A. Yes.

Q. And can you tell us a little bit about what type of priorities were given to determine who would gain access to become a United States refugee?

A. Sure. The State Department had determined, I believe in that year there were four priorities. I know at some point they limited it to three, but I believe it was four then.

Priority — and keep in mind that Priority 1 isn't a greater priority than Priority 2. These are just names. They all had equal priority. But Priority 1 was a referral from the United Nations High Commissioner for Refugees. If the UN referred someone to our program, then they would be of special humanitarian concern to the United States, so they would be able to file an I-590.

The second priority were a number of categories the State Department had set up to determine that these individuals would be allowed access. Some of them were, for instance, if an individual was married in a mixed marriage, for instance, a Bosnian Serb married to a Bosnian Croat, those individuals could come forward and seek protection. Other groups were people who may have been detained in a detention camp, for instance, they could come forward. There were a few others in that Priority 2.

Priority 3 and 4 are family-based. So if an individual has a family member that lives in the United States, and they came to the United States as a refugee or they obtained asylum status in the United States, they could then request that their family members still — you know, that were still overseas be

included in that refugee program. And that one is limited each year to various countries, and Bosnia was one of the countries that was designated.

Q. All right. In that year, were Bosnians of Serbian ancestry being invited to submit the Form I-590, Registration for Classification as a Refugee?

A. In that — in that particular program, Bosnians of any ethnicity that met those conditions were invited. So, yes, it would include Bosnian Serbs.

Q. And you indicated that there were some limits to this. How are the limits set as far as the number of overall refugees?

A. Okay. So the U.S. refugee program is a program that actually expires every year at the end of the fiscal year, and then it takes a presidential determination to create it once again for the new year. And that presidential determination then places a ceiling on the number of refugees that we can admit that year, and it also sort of splits up that ceiling amongst various regions.

And so I believe — I would say that generally, the average is about 100,000 admissions a year, but that number is fluctuated anywhere from maybe 60,000 up to 200,000, depending on what was happening in the world.

Q. Is the — at that time period, were those refugee upward limits being met usually on a yearly basis?

A. Usually they were, yes.

Q. What effect would there be if a family of aliens had sought and obtained refugee status, but had obtained that through fraud?

A. Well, since there is a ceiling, since there is a limit, the unfortunate thing is that for all of those cases that were approved where an applicant was being untruthful, it would deny a space for an applicant who would be truthful, so it would have a negative impact.

Q. And would one applying for refugee status have to meet the definition of a refugee, and also these other criteria that you talked about, the different prongs?

A. Yes, they would.

* * *

Q. All right. And then you indicated that one of the grounds for coming into the United States back then would be that you had a family member that was here, and that may allow a person to get that special status to be able to bring themselves to the United States.

Did the USCIS make accommodations for that individual's family members?

A. I am not sure I understand what you mean by "accommodations."

Q. Let me ask you a different way.

A. Sure.

Q. In each — you indicated that sometimes there's more than one person applying at a given time.

A. Uh-huh.

Q. Is that by family unit, or how is that broken down?

A. Yes, it is. The way the refugee process works, or the refugee benefit works, is that a spouse or their

qualifying children automatically get designated as refugees if the principal applicant is successful.

So let's say you have a family, a father, mother and children. If the father has a claim and it's successful, his wife and children — by qualifying children, they have to be under the age of 21 and unmarried, and they will also be included in that application automatically. They themselves do not have to make a claim. However, they have to be admissible, and they also cannot be barred.

Q. Okay. And what is the difference between being admissible and being barred?

A. Okay. For all practical purposes, for us there isn't much of a difference, but by law there is.

The bar basically falls under the definition of refugee. It's when I stated that if the person is a persecutor, they are barred from being defined as a refugee.

But the admissibility portions are that laundry list of things that would disqualify a person, such as a serious crime or if they were a terrorist or something like that, a national security threat, et cetera.

Q. Okay. And back in the Bosnia area, back in 1997, '98, would there have been a concern about the possibility that certain applicants could have been involved in persecution?

A. Well, one of the things that an adjudicator is responsible for is knowing the country conditions of the population that they are going to be adjudicating. So our officers, and officers in general, usually have briefings or materials that they study to know what was going on in the country from which these individuals have fled.

And we knew at the time that all of the warring sides in the war had committed human rights abuses. And so we were expected to be vigilant, to try to ascertain whether any of the case members were in any way implicated in those activities.

Q. In addition to requesting whether -- excuse me.

The form itself captures certain information, does it not, the I-590 form?

A. Yes, it does.

Q. And then you said there's also a biographic form. What form number is that, if you recall?

A. Okay. So the application form is the I-590. And what would typically happen is the I-590 has a portion where we ask why the person left their country. And the problem with the form is that that space is usually not nearly long enough to provide all of the information that's necessary.

So what the Refugee Service Center staff would do is they would do their own sort of bio of the individual, which contained the reasons and the story as to why they had problems in their country and why they had to leave.

And they would incorporate that into the I-590, and they would do that by stating on the I-590, "Please see the IOM bio." The form itself was called the IOM case summary sheet, I believe.

* * *

Q. All right. And would part of the educational process for the adjudication officers, would they check into the country conditions that they are going to be presented with?

A. Most of the briefings constituted information about country conditions.

In addition to that, officers are sort of expected to know their subject matters. We're expected to do our own research in addition to the briefings. So in many cases, let's say you would have a circuit ride team of asylum officers, they would have done their own independent research in addition to the briefings.

Q. At that time in '97, would the circumstances surviving incidents that occurred at Srebrenica, would that have been generally known to those people processing adjudications — or excuse me, adjudicating refugee applications?

A. From my recollection, I can say that we were aware of it. I think at that time —

MR. CAHOON: Objection.

THE COURT: Overruled.

THE WITNESS: I think at that time, though, we certainly didn't have as much information as we do today.

BY MR. TRIPI:

Q. But was it a matter of concern as far as military participation on the part of applicants, whether they be primary or derivative?

A. Yes, it would be. Regardless of whether you are a primary or derivative applicant, you cannot be barred, you cannot be inadmissible.

* * *

Q. All right. Now, going down a little further down the page, Question 13 asks to identify the military service for the applicant; is that correct?

A. That is correct.

Q. And what is the purpose of requesting that information be included in the I-590 form?

A. The reason that is included in the I-590, is because in instances of refugee adjudications, it is very common that potential refugees are fleeing countries where there is strife or problems or issues and such. And oftentimes, that strife is perpetrated by or conducted by military organizations. So we want to get up front whatever types of military organizations an individual might have been a participant of.

Q. Now, in this particular instance, on Exhibit 24, it's indicated "N/A," which I would take it probably referred to not applicable?

A. That is correct.

Q. For the derivative applicants that are relying on the principal applicant's refugee status, would they also be required to file an I-590?

A. Yes, they are.

Q. And would they have to identify, say the male members, if there are male adult members of the family, would they have to identify if they were a member of the military service?

A. Yes. Anybody would, if they had military service.

Q. All right. And without going into — I don't want you to look specifically at the form, but can you tell us, the former Republic of Yugoslavia, before it splintered up into many different parts, are you familiar with whether or not that country had a mandatory requirement for all able-bodied males to be a member of the military services?

A. We understood from our country conditions that prior to the breakup, military service was mandatory.

Q. And would it be unusual to find a notation that someone had been a member of the Yugoslavian Army?

A. Yes.

Q. It would be unusual?

A. Oh, I'm sorry, I thought you said "usual." It would be — you almost — for males of a certain age, it was very common. You almost always saw military service that was the mandatory military service.

Q. Now, just for reference, did the various different — in that country, did there come to be a designation for the various different types of military you could belong to, letter designations?

A. Yes. Prior to the breakup, we often saw JNA, which meant — I guess it would mean the — it stood for the Yugoslav National Army, or something of that.

Q. Okay. And can you tell me, for Serbians who may have participated in the Republika Srpska, the military units, how would that designation be?

A. Now we're reaching back many years. I'm sorry, I can't remember the letters, but there were — there were clear designations. I can't recall.

Q. Okay. Let me ask it a different way.

Would the Republika Srpska military be the same entity as the Yugoslavian Army?

A. No.

Q. This would be a separate military created under a fledgling republic that was trying to be born; is that correct?

A. That's our understanding.

Q. All right. And would a male applicant, in filing an I-590, who participated both as a Yugoslavian military member and later as a Republika Srpska military member, would that individual have to disclose both of those participations?

A. Yes, they would.

Q. And what is the significance of requiring that each applicant disclose whether they were part of the military?

A. We would want to explore a line of questioning to see what their activities were, whether they were involved in any activities that might be an issue as to whether or not they would be admissible to the United States as a refugee.

* * *

Q. And, now, I notice that there are these 16 bases that you say reflect whether a person is admissible. There's another question that is asked before she signs the form, immediately after the "Yes" or "No," and that's separate by itself.

Can you please read that to the jury?

A. It states, "Further, I have never ordered, assisted or otherwise participated in the persecution of any person because of race, religion or political opinion."

Q. Now, sir, can you tell the members of the jury and the court, why would that be set out separately from the top 16, if you know?

A. Yes. That was — in the original — or in an earlier iteration of this form, that language was not included. At some point in time it was determined that that was an important issue because the bar under

101(a)(42), and that we wanted to clearly have an indication from the applicant that they had not so participated in that manner.

Q. All right. And you would anticipate that if Divna Maslenjak and her husband both received refugee status as a result of this application process, they would have both represented that — each individually would have represented that they had not been involved in persecution?

A. If — if they signed this document, yes.

MR. CAHOON: Objection, Your Honor.

THE COURT: Overruled.

BY MR. TRIPI:

Q. And the — you referred that this last statement that you just read into the record goes back to the (a)(42). So this is trying to meet the actual definition of what it means to be a refugee; is that correct?

A. It refers back to 101(a)(42), the definition of a refugee, yes.

Q. And there's a requirement that this document be signed under oath; is that correct?

A. The applicant is under oath at the time that it is signed, yes.

Q. And that would be witnessed by the asylum officer or the refugee officer conducting the interview?

A. Yes, it would be.

Q. Would all of the documents that the immigration authorities requested with regard to applicants, would they ordinarily be under the penalty of perjury or under an oath of some sort?

A. They would all be under — they would certainly be under oath to tell the truth. The officer swears the applicant in at the very beginning of the process, and anything that comes thereafter during that process — or during that interview, including signatures, et cetera, we expect that they are truthful.

Q. And based upon your knowledge of how the application process was taking place back in '98, if you were presented with information on an I-590 indicating participation in the Republika Srpska military, would that have caused — based upon your training and experience — and I'm just talking about the process here. If that had been disclosed for any one of the applicants, what would — what would the refugee adjudicator need to do in that situation?

MR. CAHOON: Objection.

THE COURT: Overruled. You may answer if you know.

THE WITNESS: Yes. Officers were expected to pursue a line of questioning with regard to any military service. So whether it was the one you just described, or any military service, officers would want to know exactly what that applicant did, what their job was in the military, where they were and when they were there, what their activities were, what their orders were, et cetera.

MR. TRIPI: One moment, Your Honor. Just a couple more questions.

(Pause.)

BY MR. TRIPI:

Q. If a principal applicant — and, again, I'm just asking you about the process here, not this particular instance.

If a principal applicant made a misrepresentation about one of the derivative applicants, one of his or her family members, would that create issues for the ability for the adjudicator to adjudicate this in favor of a refugee status?

A. It would certainly raise issues. As we indicated earlier —

Q. What issues would be -- what issues would it raise with the adjudicator?

A. It would raise the issues that we discussed earlier on the 646, the issue number 7 and 15, whether the individual was providing misinformation in order to provide a benefit to someone else.

Q. All right. And — strike that.

A. There is another issue also that I should add, and that is —

MR. CAHOON: Objection.

THE COURT: Do you want him to ask — why don't you allow Mr. Tripi to ask a question.

BY MR. TRIPI:

Q. Are there any other issues that it would cause in the mind of the adjudicator as far as the successful adjudication of the principal applicant's request?

A. Yes. Adjudicators are expected to make a credibility determination in addition. We have to keep in mind that this benefit is a purely discretionary benefit. It's up to the adjudicator to determine not just whether the individual qualifies, but whether the

adjudicator found the individual's evidence to be truthful; and the adjudicator could make a determination, given certain evidence, that the individual is not credible and could deny the case on that basis also.

Q. And to what extent is the information being provided on the applicant's forms, these various forms you've identified, relied upon by USCIS in determining whether to grant refugee status?

A. Well, in the course of an adjudication — of this adjudication of a refugee case, the adjudicator is totally reliant on the forms, the information in the forms and the interview.

About a certain individual, there's generally no other way to get information other than those sources.

Q. All right. And why would that be, that there was no other way to get the information?

A. Well, ordinarily individuals are fleeing countries from which we have no access. We can't — it would be — it would go against our policies to try to contact a country that is persecuting its individuals to ask about individuals. That would violate privacy protections, et cetera. There's just no way to get that information.

Q. Is the information provided by the principal applicant and the derivative applicants, is that the primary source of the basis for making any determination?

A. Yes, it is.

Q. And whose burden is it to establish a grounds for becoming a refugee?

A. It is the applicant's burden.

* * *

[DIRECT EXAMINATION OF MONICA RAHMEYER]

THE COURT: I want you to answer directly the question: As a result of your training, what would you have done in response had you been informed that they had participated in the Republika Srpska military?

THE WITNESS: All right. Well, I would have gone to what we call a -- I call a question/answer format.

So, because this raised the possibility that there might have been — that he may have been a persecutor if he had been in that army, because they were involved in activities that were persecution as well, so I would have started a whole other sort of sub-interview.

I would have been interviewing him within that interview specifically, and I would have asked him questions. I would have written out the questions. I would have written out his answers.

And I would have asked things like, you know, "So when did you serve?" You know, "What was your position, or what was your rank when you served? Where did you serve? What activities were you involved in? Who did you serve under? How long did you serve?"

All those questions to get at, what was he involved in? Was he involved in any of these human rights abuses that have been documented in different country conditions?

BY MR. HOLLINGSWORTH:

Q. And in your review of the file, did you at any point ask any of those questions?

A. I did not.

And just one other thing about the question/answer. He would have had to sign every single page to verify that, yes, this was a conversation that took place with him.

And, no, that did not take place, because it was not brought up as an issue, because I was told that he was not in that army, and that he had been outside of the country.

And also, all of the documents that I reviewed prior to the interview were consistent with that testimony, that he was not in the Bosnian part of — or the Serb held part of Bosnia, and that he had been just in Yugoslavia during that time.

* * *

Q. Turning your attention to Government's Exhibit 29-1.

A. Yes.

Q. What is this document?

A. So this is the biographic information form. It's also part of the application. And each person would have had to have one filled out as well, each family member, including the children.

MR. HOLLINGSWORTH: Your Honor, I would ask at this time that it be published to the jury. I believe it already has been.

THE COURT: Mr. Cahoon?

MR. CAHOON: Objection, Your Honor.

THE COURT: You agree, it has been published, 29?

MR. CAHOON: I do, but I am objecting to it, Your Honor. Thank you.

THE COURT: Overruled.

BY MR. HOLLINGSWORTH:

Q. So we've got in front of us the biographic form for the defendant.

Where does it indicate that the defendant lived from August '92 to June '97?

A. Well, it talks about their residence for the last five years. There's a whole section on that.

Q. Right. And for the defendant, where does it indicate that she lived from August '92 to June '97?

A. Oh, I'm sorry. You want — okay. So from — thank you for making it bigger.

All right. So it says that she was in — from August '92 to June '97, she was in Bratunac, which was the Serbian part of Bosnia-Herzegovina.

Q. And when was this document signed?

A. This was signed on — it was signed in June of — yeah, June of '98, June 30th.

MR. HOLLINGSWORTH: For the record, Your Honor, and I defer to the witness's reading of this, but I believe it's January of '98.

THE WITNESS: Oh. I'm sorry, I mis- —

THE COURT: The jurors will decide for themselves if indeed they see it.

THE WITNESS: And it does look like it's January.

MR. HOLLINGSWORTH: Thank you, Your Honor.

BY MR. HOLLINGSWORTH:

Q. Referring your attention now to Government's Exhibit 30.

Have you seen this document before?

A. Yes, I have.

Q. When?

A. Well, I saw it, again, when I was reviewing for — when I was reviewing to testify, but, also, it would have been part of the application. It would have been part of the information in the application when I did the actual interview.

Q. And what is this document?

MR. CAHOON: Your Honor, I am going to object to any use of Government's Exhibit 30.

THE COURT: Overruled.

THE WITNESS: So this would be the biographic information sheet for the husband.

MR. HOLLINGSWORTH: And at this time, Your Honor, we would ask for permission to publish Government's 30.

THE COURT: It is published.

MR. HOLLINGSWORTH: Oh. Thank you, Your Honor.

BY MR. HOLLINGSWORTH:

Q. What does Government's Exhibit 30 say — where does it say that Mr. Maslenjak lived from August '92 to January '98?

A. It says he lived in Serbia.

Q. What town?

A. In — when I say "Serbia," I kind of inter- — I say "Serbia," but I mean — it is Yugoslavia or Serbia.

That he lived in Jagodina in Serbia, which was also consistent with their testimony and everything else that was in the application, really.

Q. Was the defendant's story consistent in the documents that you read?

A. Yes, it was.

Q. Were the documents consistent with the interview that she gave?

A. Yes, it was.

* * *

Q. Referring your attention to Government's Exhibit 28-2. Just remind the jurors what this document is.

THE COURT: Is this something they've seen before, sir?

MR. HOLLINGSWORTH: It is.

THE COURT: They are seeing it now.

THE WITNESS: This is the I-590, the Registration for Classification as Refugee form for the principal applicant's husband.

BY MR. HOLLINGSWORTH:

Q. And did — does the I-590 ask about military service?

A. It does, actually.

Q. And what was Mr. Maslenjak's answer to that question?

A. As far as military service, he —

MR. CAHOON: Excuse me, Your Honor. The same objection as before.

THE COURT: Thank you, Mr. Cahoon. Noted and overruled.

THE WITNESS: He noted that he had served in the military in 19, I believe it was '78 through 1980, and

that would have been when Yugoslavia was still a unified country; so it would have been the compulsory service that, in general, all young men had to do during that time.

BY MR. HOLLINGSWORTH:

Q. Did he disclose anywhere on this document his service in the VRS?

A. No, he didn't.

Q. And is that absence, is that omission consistent with the story that the defendant told you in the interview?

A. It was consistent with the interview —

MR. CAHOON: Objection.

THE COURT: Overruled.

THE WITNESS: It was consistent with the story during the interview, also consistent with all the documents that I had reviewed in preparation for the case, including the biographic information form, this form, the summary case sheet and the interview under oath.

* * *

[DIRECT EXAMINATION OF KARYN ZARLENGA]

Q. Did both Divna and Ratko Maslenjak receive lawful permanent resident status?

A. Yes, they did.

Q. Did they have to file a biographic information page as part of the I-485 application?

A. Yes, they did.

Q. And did your review of the file indicate that on a previous date, they had filed an I-485 application as part of the refugee process?

A. Yes.

Q. Is it unusual for the USCIS to request the same biographic information sheet to be filled out at each stage of the proceeding?

A. No, it is not.

Q. And did USCIS follow that same process here in requiring both Ratko and Divna Maslenjak to file a biographic information sheet in connection with their application for lawful permanent residence?

A. Yes.

Q. And showing you what's been marked as Government's Exhibit 35. If you could please identify that for us.

Do you have that up on your screen yet?

A. Yes. It is Mrs. Maslenjak's biographical information sheet, the Form G-325.

Q. And is this contained in her file?

A. Yes, it is.

MR. TRIPI: Your Honor, at this time I'd ask to publish this to the jury.

THE COURT: Mr. Cahoon?

MR. CAHOON: No objection, Your Honor.

THE COURT: Thank you, sir. It's being published.

MR. TRIPI: Thank you, Your Honor.

BY MR. TRIPI:

Q. This form was filed in conjunction with the I-485; is that correct?

A. Yes.

Q. And showing you specifically the section about a third of the way down, it has to do with applicant's residence for the last five years.

Can you tell us what she reported?

A. From 1992 to 1997, she reported living in Bratunac, Bosnia. And prior to that, she was in Jagodina, Serbia. And from 2000 to present when she would have filed in 2002, she claimed she was living in Barberton, Ohio.

Q. All right. And what date is that biographic information submitted by Divna Maslenjak?

A. It was filed with the form, and she indicated she signed it on June 24th, 2002.

Q. Was there a similar biographic information form located in Ratko Maslenjak's file connected with his application for permanent residency?

A. Yes.

Q. And showing you what's been marked as Government's 36. Would that be that form?

A. Yes.

MR. TRIPI: Your Honor, at this time, I'd like to publish Government's Exhibit 36 to the jury.

MR. CAHOON: Objection, Your Honor.

THE COURT: Noted and overruled. It is published.

MR. TRIPI: Thank you, Your Honor.

BY MR. TRIPI:

Q. Referring to this biographic information form, can you tell us what day it purports to have been signed by Ratko Maslenjak?

A. On June 24th, 2002.

Q. And did he fill out the section, or was it filled out on his behalf, about the applicant's residence for the last five years?

A. Yes, it was filled out. He —

Q. And did he sign the document indicating that this is his statement?

A. Yes.

Q. Can you tell us where he indicated he was residing in the five years prior to seeking adjustment to lawful permanent resident?

A. Well, he also indicated since entry into the United States, to be living in Barberton, Ohio, from 2000 to the filing. And prior to that, he claims that he was living in Jagodina, Serbia.

Q. Thank you.

* * *

[redacted]

.Justice
lization Service

OMB No. 1115-0057
Registration for Classification as Refugee

ing information. (Read instructions on reverse) A File No. [redacted]

(First) RATKO (Middle) (Last) MAELENJAK

NJEGOSEVA 27, JAGODINA, FRY

3. Date of birth: (month/day/year) [redacted] | Place of birth (city or town): ZENICA | (Province) | (Country) BH | Present nationality: BOSNIAN

4. Country from which I fled or was displaced: BOSNIA | Date of: (month/day/year) 21/AUG/92

5. Reasons (State in detail): Please see ATH #2

6. My present immigration status is: FRY (country in which residing) is: refugee

Evidence of my immigration status is: ID Card: [redacted]

(Describe)

7. Name of spouse:	8. Present address of spouse (if different):	9. Nationality of spouse:
DIVNA MAELENJAK	same as above	BOSNIAN

10. My spouse ☒ will ☐ will not accompany me to the United States.

11. Name of child (ren)	Date of birth	Place of birth	Present address (if different)
1. AMIDELA MAELENJAK	[redacted]	ZENICA, BH	same as above
2. BEJAMI MAELENJAK			

Place a mark (x) in front of name of each child who will accompany you to the United States.

12. Schooling or education

Name and location of school	Type	Dates attended	Title of degree or diploma
VOC. HIGH SCHOOL, ZENICA, BH	High	1975-1978	High school degree electrical technician

13. Military service

Country	Branch and organization	Dates	Serial No.	Rank attained
YUGOSLAVIA	communication	1979-1980		private

NOV 22 00 7:00AM 1434

Form I-590 (Rev. 11-13-92)Y

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U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0087

Registration for Classification as Refugee

Type or print the following information. *(Read instructions on reverse)* A File No.: [redacted]

1. Name: (First) RATKO (Middle) (Last) MASLENJAK

2. Present address: NJEGOSEVA 27, JAGODINA, FRY

3. Date of birth: (month/day/year)	Place of birth (city or town)	(Province)	(Country)	Present nationality:
[redacted]	ZENICA		BH	BOSNIAN

4. Country from which I fled or was displaced: BOSNIA — On or about (month/day/year): 2/AUG/92

5. Reasons *(State in detail)*:

PLEASE SEE TOM BIO

6. My present immigration status in FRY *(country in which residing)* is: refugee

Evidence of my immigration status is: M-10 card: [redacted]

(Describe)

7. Name of spouse:	8. Present address of spouse *(if different)*:	9. Nationality of spouse:
DIVNA MASLENJAK	same as above	BOSNIAN

10. My spouse ☒ will ☐ will not accompany me to the United States.

11. Name of child (ren)

	Date of birth	Place of birth	Present address (if different)
A DANIJELA MASLENJAK	[redacted]	ZENICA, BH	same as above
A DEJAN MASLENJAK		↓	↓

Place a mark (x) in front of name of each child who will accompany you to the United States.

12. Schooling or education

Name and location of school	Type	Dates attended	Title of degree or diploma
VOC. HIGH SCHOOL, ZENICA, BH	High	1975-1978	High school degree, electrical technician

13. Military service

Country	Branch and organization	Dates	Serial No.	Rank attained
YUGOSLAVIA	communication	1979-1980		private

NOV 22 00 7:00 AM 1434

Form I-590 (Rev. 11-13-92)Y

14. Political, professional or social organizations of which I am now or have been a member or with which I am now or have been affiliated since my 16th birthday (If you have never been a member of any organization, state "None.")

NONE

15. I ☐ have ☒ have not been charged with a violation of law. (If you have ever been charged with a violation of law, give date, place and nature of each charge and the final result.)

16. I ☐ have ☒ have not been in the United States. (If you have ever been in the United States, show the dates of entry and departure and the purpose of your entry (visitor, permanent resident, student, seaman, etc.).

File or Alien Registration Number:

17. I have the following close relatives in the United States:

Name	Relationship	Present address
NA		

18. I am being sponsored by: Name and address of United States sponsor:

Date: 20 MAY 98

Signature of registrant: Haslejak Ratka

DO NOT WRITE BELOW THIS LINE

I, _____, do swear (affirm) that I know the contents of this registration subscribed by me including the attached documents, that the same are true to the best of my knowledge, and that corrections numbered ( ) to ( ) were made by me or at my request, and that this registration was signed by me with my full, true name:

Haslejak Ratka
(Complete and true signature of registrant)

Subscribed and sworn to before me by the above-named registrant at BELGRADE on 22-MAY-1998
(month/day/year)

(Signature and title of officer)

INTERVIEW [illegible]

DATE 22-MAY-98

AT BELGRADE

Immigration Officer

APPROVED

DATE

Officer in Charge

INSPECTION
SEP 28
REVIEWED

INSTRUCTIONS

This form should be executed, signed and submitted to the Officer in Charge of the nearest overseas office of the United States Immigration and Naturalization Service. When your name has been reached as a registrant you will be furnished additional instructions.

Registration - A separate Registration Form must be executed by each registrant and submitted in one copy. A Registration Form in behalf of a child under 14 years of age shall be executed by the parent of guardian.

Public reporting burden for this collection of information is estimated to average 35 minutes per response. If you have comments regarding the accuracy of this estimate or suggestions for simplifying this form, you can write to both the U.S. Department of Justice, Immigration and Naturalization Service Policy Directives and Instructions Branch (HQPDI), Washington, D.C. 20536 and to the Office of Management and Budget, Paperwork Reduction Project: OMB No. 1115-0087, Washington, D.C. 20503.

U.S. Department of Justice
Immigration and Naturalization Service

FORM G-325C
BIOGRAPHIC INFORMATION

(FAMILY NAME)	(FIRST NAME)	(MIDDLE NAME)	☐ MALE ☑ FEMALE	[redacted]	NATIONALITY
MASLINJAK	DIVNA				BOSNIAN
ALL OTHER NAMES USED			CITY AND COUNTRY OF BIRTH		
			ZENICA, BIH		

	FAMILY NAME	FIRST NAME	DATE, CITY AND COUNTRY OF BIRTH (IF KNOWN)	CITY AND COUNTRY OF RESIDENCE
FATHER	MIJATOVIC	MUSLIJA	1942 ZENICA, BIH	[redacted]
MOTHER (MAIDEN NAME)	BUTINA	ZEJNIJA	1945 ↓	

HUSBAND OR WIFE (IF NONE, SO STATE)	FAMILY NAME (FOR WIFE, GIVE MAIDEN NAME)	FIRST NAME	BIRTHDATE	CITY & COUNTRY OF BIRTH	DATE OF MARRIAGE	PLACE OF MARRIAGE
	MASLINJAK	BAJRO	[redacted]	ZENICA	[redacted]	ZENICA, BIH

FORMER HUSBANDS OR WIVES (FILL IN THE BLOCKS BELOW. IF NONE, STATE "NONE".)

FAMILY NAME (FOR WIFE, GIVE MAIDEN NAME)	FIRST NAME	BIRTHDATE	DATE & PLACE OF MARRIAGE	DATE AND PLACE OF TERMINATION OF MARRIAGE
MUJIC				

APPLICANT'S RESIDENCE LAST FIVE YEARS. LIST PRESENT ADDRESS FIRST.

STREET AND NUMBER	CITY	PROVINCE OR STATE	COUNTRY	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR
UNEGOVEVA 39	DAGOMIRA		ITALY	JUN	87	PRESENT TIME	
GAVRILA PRINCIPA 60	BRATUNAC		BIH	AUG	92	JUN	87
RUCE 16	ZENICA		BIH	DEC	81	AUG	92

APPLICANT'S EMPLOYMENT LAST FIVE YEARS. (IF NONE, SO STATE) LIST PRESENT EMPLOYMENT FIRST.

FULL NAME AND ADDRESS OF EMPLOYER	OCCUPATION	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR
UNEMPLOYED		APR	92	PRESENT TIME	
PAPER FACTORY, ZENICA, BIH	student		81	APR	92

APPLICANT FOR REFUGEE STATUS

IF YOUR NATIVE ALPHABET IS IN OTHER THAN ROMAN LETTERS, WRITE YOUR NAME IN YOUR NATIVE ALPHABET BELOW:

20/ MAY 98
DATE

Maslinjak Divna
(SIGNATURE OF APPLICANT)

PENALTIES: SEVERE PENALTIES ARE PROVIDED BY LAW FOR KNOWINGLY AND WILLFULLY FALSIFYING OR CONCEALING A MATERIAL FACT.

APPLICANT: BE SURE TO PUT YOUR NAME IN THE BOX OUTLINED BY HEAVY BORDER BELOW.

COMPLETE THIS BOX (FAMILY NAME)	(GIVEN NAME)	(MIDDLE NAME)
MASLINJAK	DIVNA	

FORM G-325C (Rev. 10-1-82)Y

GOVERNMENT EXHIBIT 29 1:13CR126

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U.S. Department of Justice
Immigration and Naturalization Service

FORM G-325C
BIOGRAPHIC INFORMATION

OMB No. 1115-0066

(FAMILY NAME)	(FIRST NAME)	(MIDDLE NAME)	SEX	MARITAL STATUS	NATIONALITY
MASLENJAK	RATKO		☒ MALE ☐ FEMALE	[redacted]	BOSNIAN

ALL OTHER NAMES USED — CITY AND COUNTRY OF BIRTH: ZENICA, BH

	FAMILY NAME	FIRST NAME	DATE, CITY AND COUNTRY OF BIRTH (IF KNOWN)	CITY AND COUNTRY OF RESIDENCE
FATHER	MASLENJAK	RANKO	1938 ZENICA, BH	[redacted]
MOTHER (MAIDEN NAME)	JANKOVIC	MILENA	1940 "	

HUSBAND OR WIFE (IF NONE, SO STATE)	FAMILY NAME (FOR WIFE, GIVE MAIDEN NAME)	FIRST NAME	BIRTHDATE	CITY & COUNTRY OF BIRTH	DATE OF MARRIAGE	PLACE OF MARRIAGE
	MIJATOVIC	DIJANA	[redacted]	ZENICA, BH	[redacted]	ZENICA, BH

FORMER HUSBANDS OR WIVES (TELL IN THE SPACE BELOW, IF NONE, STATE "NONE")

FAMILY NAME (FOR WIFE, GIVE MAIDEN NAME)	FIRST NAME	BIRTHDATE	DATE & PLACE OF MARRIAGE	DATE AND PLACE OF TERMINATION OF MARRIAGE
NONE				

APPLICANT'S RESIDENCE LAST FIVE YEARS. LIST PRESENT ADDRESS FIRST.

STREET AND NUMBER	CITY	PROVINCE OR STATE	COUNTRY	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR
NEGOTINSKA 27	ZAGORJE		BH	AUG	92	PRESENT TIME	
SVICE 76	ZENICA		BH	SINCE BIRTH		AUG	92

APPLICANT'S EMPLOYMENT LAST FIVE YEARS. (IF MIL. SO STATE) LIST PRESENT EMPLOYMENT FIRST.

FULL NAME AND ADDRESS OF EMPLOYER	OCCUPATION	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR
UNEMPLOYED		APR	93	PRESENT TIME	
STEEL FACTORY, ZENICA, BH	electrician		78	APR	92

APPLICANT FOR REFUGEE STATUS

IF YOUR NATIVE ALPHABET IS IN OTHER THAN ROMAN LETTERS, WRITE YOUR NAME IN YOUR NATIVE ALPHABET BELOW.

30/MAY/98 — Maslenjak Ratko
(DATE) (SIGNATURE OF APPLICANT)

PENALTIES: SEVERE PENALTIES ARE PROVIDED BY LAW FOR KNOWINGLY AND WILLFULLY FALSIFYING OR CONCEALING A MATERIAL FACT.

APPLICANT: BE SURE TO PUT YOUR NAME IN THE BOX OUTLINED BY HEAVY BORDER BELOW.

COMPLETE THIS BOX (FAMILY NAME)	(GIVEN NAME)	(MIDDLE NAME)
MASLENJAK	RATKO	

FORM G-325C (Rev. 10-1-92)Y

GOVERNMENT EXHIBIT 30 1:13CR126

Gov Ex 30-1

OMB No. 1115-0053

U.S. Department of Justice
Immigration and Naturalization Service

Form I-485, Application to Register Permanent Resident or Adjust Status

START HERE - Please Type or Print

FOR INS USE ONLY

Returned | Receipt

Resubmitted

Relocated Sent

Relocated Rec'd

Applicant Interviewed

Part 1. Information About You.

Family Name	Maslenjak	Given Name	Divna
Middle Initial			
Address - C/O	[redacted]		
Street Number and Name	[redacted]	Apt. #	
City	[redacted]		
State	[redacted]	Zip Code	[redacted]
Date of Birth (month/day/year)	[redacted]	Country of Birth	Bosnia-Herzegovina
Social Security	[redacted]	A # (if any)	[redacted]
Date of Last Arrival (month/day/year)	9-28-00	I-94	[redacted]
Current INS Status	Refugee	Expires on (month/day/year)	Indefinite

Part 2. Application Type. *(check one)*

I am applying for an **adjustment to permanent resident status because:** O 5-31-04

a. ☐ an immigrant petition giving me an immediately available immigrant visa number has been approved. (Attach a copy of the approval notice -- or a relative, special immigrant juvenile or special immigrant military visa petition filed with this application that will give you an immediately available visa number, if approved.)

b. ☐ my spouse or parent applied for adjustment of status or was granted lawful permanent residence in an immigrant visa category that allows derivative status for spouses and children.

c. ☐ I entered as a K-1 fiance(e) of a U.S. citizen whom I married within 90 days of entry, or I am the K-2 child of such a fiance(e). [Attach a copy of the fiance(e) petition approval notice and the marriage certificate.]

d. ☐ I was granted asylum or derivative asylum status as the spouse or child of a person granted asylum and am eligible for adjustment.

e. ☐ I am a native or citizen of Cuba admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.

f. ☐ I am the husband, wife or minor unmarried child of a Cuban described in (e) and am residing with that person, and was admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.

g. ☐ I have continuously resided in the U.S. since before January 1, 1972.

h. ☒ Other basis of eligibility. Explain. (If additional space is needed, use a separate piece of paper.) Refugee

I am already a permanent resident and am applying to have the date I was granted permanent residence adjusted to the date I originally arrived in the U.S. as a nonimmigrant or parolee, or as of May 2,1964, whichever date is later, and: *(Check one)*

i. ☐ I am a native or citizen of Cuba and meet the description in (e), above.

j. ☐ I am the husband, wife or minor unmarried child of a Cuban, and meet the description in (f), above.

Continued on back

Section of Law
- ☒ Sec. 209(b), INA
- ☐ Sec. 13, Act of 9/11/57
- ☐ Sec. 245, INA
- ☐ Sec. 249, INA
- ☐ Sec. 2 Act of 11/2/66
- ☐ Sec. 2 Act of 11/2/66
- ☐ Other _____

Country Chargeable

Eligibility Under Sec. 245
- ☐ Approved Visa Petition
- ☐ Dependent of Principal Alien
- ☐ Special Immigrant
- ☐ Other _____

Preference E-6

Action Block

To be Completed by *Attorney or Representative, if any*

Fill in box if G-28 is attached to represent the applicant.

VOLAG #

ATTY State License #

Part 3. Processing Information.

A. City/Town/Village of Birth: Zenica	Current Occupation: Cook
Your Mother's First Name: Ljubica	Your Father's First Name: Bosko
Give your name exactly how it appears on your Arrival /Departure Record (Form I-94): Maslenjak Divna	No departures
Place of Last Entry Into the U.S. (City/State): NYC	In what status did you last enter? (Visitor, student, exchange alien, crewman, temporary worker, without inspection, etc.): Refugee
Were you inspected by a U.S. Immigration Officer? ☒ Yes ☐ No	
Nonimmigrant Visa Number: None	Consulate Where Visa Was Issued: N-A
Date Visa Was Issued (month/day/year): N-A	Sex: ☐ Male ☒ Female
	Marital Status: ☒ Married ☐ Single ☐ Divorced ☐ Widowed

Have you ever before applied for permanent resident status in the U.S.? ☒ No ☐ Yes If you checked "Yes," give date and place of filing and final disposition.

B. List your present husband/wife and all your sons and daughters. (If you have none, write "none." If additional space is needed, use a separate piece of paper.)

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Maslenjak	Ratko	[redacted]	[redacted]
Country of Birth: Bosnia	Relationship: husband		Applying with You? ☒ Yes ☐ No
Family Name: Maslenjak	Given Name: Danijela	Middle Initial	Date of Birth (month/day/year) [redacted]
Country of Birth: Bosnia	Relationship: daughter	[redacted]	Applying with You? ☒ Yes ☐ No
Family Name: Maslenjak	Given Name: Dejan	Middle Initial	Date of Birth (month/day/year) [redacted]
Country of Birth: Bosnia	Relationship: son	[redacted]	Applying with You? ☒ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No

List your present and past membership in or affiliation with every political organization, association, fund, foundation, party, club, society or similar group in the United States or in other places since your 16th birthday. Include any foreign military service in this part. If none, write "none." Include the name(s) of the organization(s), location(s), dates of membership from and to, and the nature of the organization (s). If additional space is needed, use a separate piece of paper.

None

Part 3. Processing Information. *(Continued)*

Please answer the following questions. (If your answer is "Yes" to any one of these questions, explain on a separate piece of paper. Answering "Yes" does not necessarily mean that you are not entitled to adjust your status or register for permanent residence.)

1. Have you ever, in or outside the U.S.:
   a. knowingly committed any crime of moral turpitude or a drug-related offense for which you have not been arrested? ☐ Yes ☒ No
   b. been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance, excluding traffic violations? ☐ Yes ☒ No
   c. been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency or similar action? ☐ Yes ☒ No
   d. exercised diplomatic immunity to avoid prosecution for a criminal offense in the U.S.? ☐ Yes ☒ No

2. Have you received public assistance in the U.S. from any source, including the U.S. government or any state, county, city or municipality (other than emergency medical treatment), or are you likely to receive public assistance in the future? ☒ Yes ☐ No
   Refugee cash assistance Sept. to December 2000, food stamps Sept 2000 to March 2001.

3. Have you ever:
   a. within the past ten years been a prostitute or procured anyone for prostitution, or intend to engage in such activities in the future? ☐ Yes ☒ No
   b. engaged in any unlawful commercialized vice, including, but not limited to, illegal gambling? ☐ Yes ☒ No
   c. knowingly encouraged, induced, assisted, abetted or aided any alien to try to enter the U.S. illegally? ☐ Yes ☒ No
   d. illicitly trafficked in any controlled substance, or knowingly assisted, abetted or colluded in the illicit trafficking of any controlled substance? ☐ Yes ☒ No

4. Have you ever engaged in, conspired to engage in, or do you intend to engage in, or have you ever solicited membership or funds for, or have you through any means ever assisted or provided any type of material support to, any person or organization that has ever engaged or conspired to engage, in sabotage, kidnapping, political assassination, hijacking or any other form of terrorist activity? ☐ Yes ☒ No

5. Do you intend to engage in the U.S. in:
   a. espionage? ☐ Yes ☒ No
   b. any activity a purpose of which is opposition to, or the control or overthrow of, the government of the United States, by force, violence or other unlawful means? ☐ Yes ☒ No
   c. any activity to violate or evade any law prohibiting the export from the United States of goods, technology or sensitive information? ☐ Yes ☒ No

6. Have you ever been a member of, or in any way affiliated with, the Communist Party or any other totalitarian party? ☐ Yes ☒ No

7. Did you, during the period from March 23, 1933 to May 8, 1945, in association with either the Nazi Government of Germany or any organization or government associated or allied with the Nazi Government of Germany, ever order, incite, assist or otherwise participate in the persecution of any person because of race, religion, national origin or political opinion? ☐ Yes ☒ No

8. Have you ever engaged in genocide, or otherwise ordered, incited, assisted or otherwise participated in the killing of any person because of race, religion, nationality, ethnic origin or political opinion? ☐ Yes ☒ No

9. Have you ever been deported from the U.S., or removed from the U.S. at government expense, excluded within the past year, or are you now in exclusion or deportation proceedings? ☐ Yes ☒ No

10. Are you under a final order of civil penalty for violating section 274C of the Immigration and Nationality Act for use of fraudulent documents or have you, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the U.S. or any immigration benefit? ☐ Yes ☒ No

11. Have you ever left the U.S. to avoid being drafted into the U.S. Armed Forces? ☐ Yes ☒ No

12. Have you ever been a J nonimmigrant exchange visitor who was subject to the two-year foreign residence requirement and not yet complied with that requirement or obtained a waiver? ☐ Yes ☒ No

13. Are you now withholding custody of a U.S. citizen child outside the U.S. from a person granted custody of the child? ☐ Yes ☒ No

14. Do you plan to practice polygamy in the U.S.? ☐ Yes ☒ No

Continued on back

Part 4. Signature. *(Read the information on penalties in the instructions before completing this section. You must file this application while in the United States.)*

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it is all true and correct. I authorize the release of any information from my records which the INS needs to determine eligibility for the benefit I am seeking.

Selective Service Registration. The following applies to you if you are a man at least 18 years old, but not yet 26 years old, who is required to register with the Selective Service System: I understand that my filing this adjustment of status application with the Immigration and Naturalization Service authorizes the INS to provide certain registration information to the Selective Service System in accordance with the Military Selective Service Act. Upon INS acceptance of my application, I authorize INS to transmit to the Selective Service System my name, current address, Social Security number, date of birth and the date I filed the application for the purpose of recording my Selective Service registration as of the filing date. If, however, the INS does not accept my application, I further understand that, if so required, I am responsible for registering with the Selective Service by other means, provided I have not yet reached age 26.

Signature	*Print Your Name*	*Date*	
Divna Maslenjak	Maslenjak, Divna	6-27-02	[redacted]

Please Note: *If you do not completely fill out this form or fail to submit required documents listed in the instructions, you may not be found eligible for the requested benefit and this application may be denied.*

Part 5. Signature of Person Preparing Form, If Other Than Above. *(Sign Below)*

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature	*Print Your Name*	*Date*	
Patricia A. Barger	Patricia A. Barger	6-27-02	[redacted]

Firm Name and Address
International Institute
207 E. Tallmadge Avenue
Akron, OH 44310

GOVERNMENT PRINTING OFFICE: 2001-476-815

OMB No. 1115-0053

U.S. Department of Justice
Immigration and Naturalization Service

Form I-485, Application to Register Permanent Resident or Adjust Status

START HERE - Please Type or Print

FOR INS USE ONLY

Returned | Receipt

Resubmitted

Reloc Sent

Reloc Rec'd

Applicant Interviewed

Part 1. Information About You.

Family Name: Maslenjak	Given Name: Ratko
Address - C/O	Middle Initial
Street Number and Name: [redacted]	Apt. #
City: [redacted]	
State: [redacted]	Zip Code: [redacted]
Date of Birth (month/day/year): [redacted]	Country of Birth: Bosnia-Herzegovina
Social Security #: [redacted]	A # (if any): [redacted]
Date of Last Arrival (month/day/year): 9-28-00	I-94: [redacted]
Current INS Status: Refugee	Expires on (month/day/year): Indefinite

Part 2. Application Type. *(check one)*

I am applying for an adjustment to permanent resident status because:

a. ☐ an immigrant petition giving me an immediately available immigrant visa number has been approved. (Attach a copy of the approval notice -- or a relative, special immigrant juvenile or special immigrant military visa petition filed with this application that will give you an immediately available visa number, if approved.)

b. ☐ my spouse or parent applied for adjustment of status or was granted lawful permanent residence in an immigrant visa category that allows derivative status for spouses and children.

c. ☐ I entered as a K-1 fiance(e) of a U.S. citizen whom I married within 90 days of entry, or I am the K-2 child of such a fiance(e). (Attach a copy of the fiance(e) petition approval notice and the marriage certificate.)

d. ☐ I was granted asylum or derivative asylum status as the spouse or child of a person granted asylum and am eligible for adjustment.

e. ☐ I am a native or citizen of Cuba admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.

f. ☐ I am the husband, wife or minor unmarried child of a Cuban described in (e) and am residing with that person, and was admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.

g. ☐ I have continuously resided in the U.S. since before January 1, 1972.

h. ☒ Other basis of eligibility. Explain. (If additional space is needed, use a separate piece of paper.) Refugee adjustment

I am already a permanent resident and am applying to have the date I was granted permanent residence adjusted to the date I originally arrived in the U.S. as a nonimmigrant or parolee, or as of May 2, 1964, whichever date is later, and: *(Check one)*

i. ☐ I am a native or citizen of Cuba and meet the description in (e), above.

j. ☐ I am the husband, wife or minor unmarried child of a Cuban, and meet the description in (f), above.

Continued on back

Section of Law
- ☐ Sec. 209(b), INA
- ☐ Sec. 13, Act of 9/11/57
- ☐ Sec. 245, INA
- ☐ Sec. 249, INA
- ☐ Sec. 2 Act of 11/2/66
- ☐ Sec. 2 Act of 11/2/66
- ☐ Other _____

Country Chargeable

Eligibility Under Sec. 245
- ☐ Approved Visa Petition
- ☐ Dependent of Principal Alien
- ☐ Special Immigrant
- ☐ Other _____

Preference

Action Block

To be Completed by *Attorney or Representative, if any*

☒ Fill in box if G-28 is attached to representing the applicant.

VOLAG #

ATTY State Licence #

AUG 12 2002 9:33 AM 3 U26

Part 3. Processing Information.

City/Town/Village of Birth: Zenica	Current Occupation: Machine operator
Your Mother's First Name: Milena	Your Father's First Name: Ranko

Give your name exactly how it appears on your Arrival/Departure Record (Form I-94): Maslenjak Ra[illegible] — No departures

Place of Last Entry into the U.S. (City): [illegible]C — In what status did you last enter? (*Visitor, student, exchange alien, crewman, temporary worker, without inspection, etc.*): Refugee

Were you inspected by a U.S. Immigration Officer? ☒ Yes ☐ No — Consulate Where Visa Was Issued: N-1

Nonimmigrant Visa Number: [illegible] — Date Visa Was Issued (month/day/year): [illegible] — Sex: ☐ Male ☐ Female — Marital Status: ☒ Married ☐ Single ☐ Divorced ☐ Widowed

Have you ever before applied for status or benefits under the immigration laws of the U.S.? ☒ No ☐ Yes If you checked "Yes," give date and place of filing and final disposition.



B. List your present husband/wife, all your sons and daughters. (If none, write "none." If additional space is needed, use a separate piece of paper.)

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Nee: M[illegible]eate	Divna		[redacted]
Country of Birth: Bosnia	Relationship: W[illegible]e	[redacted]	Applying with You? ☒ Yes ☐ No
Family Name: Maslenjak	Given Name: Daniela	Middle Initial	Date of Birth (month/day/year): [redacted]
Country of Birth: Bosnia	Relationship: daughter	[redacted]	Applying with You? ☒ Yes ☐ No
Family Name: Maslenjak	Given Name: Dejan	Middle Initial	Date of Birth (month/day/year): [redacted]
Country of Birth: Bosnia	Relationship: son	[redacted]	Applying with You? ☒ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No

C. List your present and past membership in or affiliation with every political organization, association, fund, foundation, party, club, society or similar group in the United States or in other places since your 16th birthday. Include any foreign military service in this part. If none, write "none." Include the name(s) of the organization(s), location(s), dates of membership from and to, and the nature of the organization (s). If additional space is needed, use a separate piece of paper.

Yugoslavian Army 1979 1980

Part 3. Processing Information.

City/Town/Village of Birth: Zenica	Current Occupation: Machine operator
Your Mother's First Name: Milena	Your Father's First Name: Ranko
Give your name exactly how it appears on your Arrival/Departure Record (Form I-94): Maslenjak Ratko	No departures
Place of Last Entry Into the U.S. (City/State): NYC	In what status did you last enter? *(Visitor, student, exchange alien, crewman, temporary worker, without inspection, etc.)*: Refugee
Were you inspected by a U.S. Immigration Officer? ☒ Yes ☐ No	
Nonimmigrant Visa Number: None	Consulate Where Visa Was Issued: N-A
Date Visa Was Issued (month/day/year): N-A	Sex: ☒ Male ☐ Female — Marital Status: ☒ Married ☐ Single ☐ Divorced ☐ Widowed

Have you ever before applied for permanent resident status in the U.S.? ☒ No ☐ Yes If you checked "Yes," give date and place of filing and final disposition.

B. List your present husband/wife and all your sons and daughters. (If you have none, write "none." If additional space is needed, use a separate piece of paper.)

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Nee: Mijatovic	Divna	[redacted]	[redacted]
Country of Birth: Bosnia	Relationship: wife		Applying with You? ☒ Yes ☐ No
Family Name: Maslenjak	Given Name: Danijela	Middle Initial	Date of Birth (month/day/year) [redacted]
Country of Birth: Bosnia	Relationship: daughter	[redacted]	Applying with You? ☒ Yes ☐ No
Family Name: Maslenjak	Given Name: Dejan	Middle Initial	Date of Birth (month/day/year) [redacted]
Country of Birth: Bosnia	Relationship: son	[redacted]	Applying with You? ☒ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No

C. List your present and past membership in or affiliation with every political organization, association, fund, foundation, party, club, society or similar group in the United States or in other places since your 16th birthday. Include any foreign military service in this part. If none, write "none." Include the name(s) of the organization(s), location(s), dates of membership from and to, and the nature of the organization (s). If additional space is needed, use a separate piece of paper.

Yugoslavian Army 1979 1980

Part 3. Processing Information. *(Continued)*

Please answer the following questions. (If your answer is "Yes" to any one of these questions, explain on a separate piece of paper. Answering "Yes" does not necessarily mean that you are not entitled to adjust your status or register for permanent residence.)

1. Have you ever, in or outside the U. S.:
   a. knowingly committed any crime of moral turpitude or a drug-related offense for which you have not been arrested? ☐ Yes ☒ No
   b. been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance, excluding traffic violations? ☐ Yes ☒ No
   c. been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency or similar action? ☐ Yes ☒ No
   d. exercised diplomatic immunity to avoid prosecution for a criminal offense in the U. S.? ☐ Yes ☒ No
2. Have you received public assistance in the U.S. from any source, including the U.S. government or any state, county, city or municipality (other than emergency medical treatment) or are you likely to receive public assistance in the future? Refugee. ☒ Yes ☐ No
   cash assistance Sept. to December 2000, food stamps
3. Have you ever: Sept. 2000 to March 2001.
   a. within the past ten years been a prostitute or procured anyone for prostitution, or intend to engage in such activities in the future? ☐ Yes ☒ No
   b. engaged in any unlawful commercialized vice, including, but not limited to, illegal gambling? ☐ Yes ☒ No
   c. knowingly encouraged, induced, assisted, abetted or aided any alien to try to enter the U.S. illegally? ☐ Yes ☒ No
   d. illicitly trafficked in any controlled substance, or knowingly assisted, abetted or colluded in the illicit trafficking of any controlled substance? ☐ Yes ☒ No
4. Have you ever engaged in, conspired to engage in, or do you intend to engage in, or have you ever solicited membership or funds for, or have you through any means ever assisted or provided any type of material support to, any person or organization that has ever engaged or conspired to engage, in sabotage, kidnapping, political assassination, hijacking, or any other form of terrorist activity? ☐ Yes ☒ No
5. Do you intend to engage in the U.S. in:
   a. espionage? ☐ Yes ☒ No
   b. any activity a purpose of which is opposition to, or the control or overthrow of, the government of the United States, by force, violence or other unlawful means? ☐ Yes ☒ No
   c. any activity to violate or evade any law prohibiting the export from the United States of goods, technology or sensitive information? ☐ Yes ☒ No
6. Have you ever been a member of, or in any way affiliated with, the Communist Party or any other totalitarian party? ☐ Yes ☒ No
7. Did you, during the period from March 23, 1933 to May 8, 1945, in association with either the Nazi Government of Germany or any organization or government associated or allied with the Nazi Government of Germany, ever order, incite, assist or otherwise participate in the persecution of any person because of race, religion, national origin or political opinion? ☐ Yes ☒ No
8. Have you ever engaged in genocide, or otherwise ordered, incited, assisted or otherwise participated in the killing of any person because of race, religion, nationality, ethnic origin or political opinion? ☐ Yes ☒ No
9. Have you ever been deported from the U.S., or removed from the U.S. at government expense, excluded within the past year, or are you now in exclusion or deportation proceedings? ☐ Yes ☒ No
10. Are you under a final order of civil penalty for violating section 274C of the Immigration and Nationality Act for use of fraudulent documents or have you, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the U.S. or any immigration benefit? ☐ Yes ☒ No
11. Have you ever left the U.S. to avoid being drafted into the U.S. Armed Forces? ☐ Yes ☒ No
12. Have you ever been a J nonimmigrant exchange visitor who was subject to the two-year foreign residence requirement and not yet complied with that requirement or obtained a waiver? ☐ Yes ☒ No
13. Are you now withholding custody of a U.S. citizen child outside the U.S. from a person granted custody of the child? ☐ Yes ☒ No
14. Do you plan to practice polygamy in the U.S.? ☐ Yes ☒ No

Continued on back

Part 4. Signature. *(Read the information on penalties in the instructions before completing this section. You must file this application while in the United States.)*

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it is all true and correct. I authorize the release of any information from my records which the INS needs to determine eligibility for the benefit I am seeking.

Selective Service Registration. The following applies to you if you are a male at least 18 years old, but not yet 26 years old, who is required to register with the Selective Service System: I understand that my filing this adjustment of status application with the Immigration and Naturalization Service authorizes the INS to provide certain registration information to the Selective Service System in accordance with the Military Selective Service Act. Upon INS acceptance of my application, I authorize INS to transmit to the Selective Service System my name, current address, Social Security number, date of birth and the date I filed the application for the purpose of recording my Selective Service registration as of the filing date. If, however, the INS does not accept my application, I further understand that, if so required, I am responsible for registering with the Selective Service by other means, provided I have not yet reached age 26.

Signature Ratko Maslenjak *Print Your Name* Maslenjak Ratko *Date* 6-17-02 [redacted]

Please Note: ***If you do not completely fill out this form or fail to submit required documents listed in the instructions, you may not be found eligible for the requested benefit and this application may be denied.***

Part 5. Signature of Person Preparing Form, If Other Than Above. ***(Sign Below)***

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature *Print Your Name* Patricia A Barger *Date* 6-21-02 [redacted]

Firm Name and Address

International Institute
207 E. Tallmadge Avenue
Akron, OH 44310

U.S. Department of Justice
Immigration and Naturalization Service

BIOGRAPHIC INFORMATION

OMB No. 1115-0066

(Family name)	(First name)	(Middle name)	☐ MALE ☒ FEMALE	BIRTHDATE (Mo. Day. Yr.)	NATIONALITY	FILE NUMBER
MASLENJAK	DIVNA				SERBIAN	A [redacted]

ALL OTHER NAMES USED (Including names by previous marriages)	CITY AND COUNTRY OF BIRTH	SOCIAL SECURITY NO.
NEE: MUHIC	ZENICA - BOSNIA	[redacted]

	FAMILY NAME	FIRST NAME	DATE, CITY AND COUNTRY OF BIRTH (If known)	CITY AND COUNTRY OF RESIDENCE
FATHER	MUJATOVIC	BOSKO	1942 ZENICA - BOSNIA	deceased
MOTHER (Maiden name)	DUTINA	LJUBICA	1945 ZENICA BOSNIA	[redacted]

HUSBAND (If none, so state) OR WIFE	(Last name) (For wife, give maiden name)	FIRST NAME	BIRTHDATE	CITY & COUNTRY OF BIRTH	DATE & PLACE OF MARRIAGE	PLACE OF MARRIAGE
	MASLENJAK	RATKO	[redacted]	ZENICA - BOSNIA	[redacted] ZENICA BOSNIA	Bosnia ZENICA

FORMER HUSBANDS OR WIVES (If none, so state) FAMILY NAME (For wife, give maiden name)	FIRST NAME	BIRTHDATE	DATE & PLACE OF MARRIAGE	DATE AND PLACE OF TERMINATION OF MARRIAGE
None				

APPLICANT'S RESIDENCE LAST FIVE YEARS. LIST PRESENT ADDRESS FIRST.

STREET AND NUMBER	CITY	PROVINCE OR STATE	COUNTRY	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR
	bratunac	BOSNIA			1992	PRESENT TIME	
HERCEGOVINA 27	JAGODINA	SERBIA	YUGOSLAVIA	09	97	09	00
[redacted]	[redacted]	[redacted]	[redacted]	09	2000	to present	

APPLICANT'S LAST ADDRESS OUTSIDE THE UNITED STATES OF MORE THAN ONE YEAR

STREET AND NUMBER	CITY	PROVINCE OR STATE	COUNTRY	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR
NJEGOSEVA 27	JAGODINA	SERBIA	YUGOSLAVIA	09	97	09	2000

APPLICANT'S EMPLOYMENT LAST FIVE YEARS. (IF NONE, SO STATE) LIST PRESENT EMPLOYMENT FIRST

FULL NAME AND ADDRESS OF EMPLOYER	OCCUPATION (SPECIFY)	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR
[redacted]	Cooking	12	2000	PRESENT TIME	

Show below last occupation abroad if not shown above. (Include all information requested above.)

EXIST IN BOSNIA.

THIS FORM IS SUBMITTED IN CONNECTION WITH APPLICATION FOR:
☐ NATURALIZATION ☐ OTHER (SPECIFY):
☒ STATUS AS PERMANENT RESIDENT

SIGNATURE OF APPLICANT: x Divna Maslenjak DATE: 06-24-02

Are all copies legible? ☒ Yes

Divna Maslenjak

FORGERIES BEYOND PENALTIES ARE PROVIDED BY LAW FOR KNOWINGLY AND WILLFULLY FALSIFYING OR CONCEALING A MATERIAL FACT.

APPLICANT: BE SURE TO PUT YOUR NAME AND ALIEN REGISTRATION NUMBER IN THE BOX OUTLINED BY HEAVY BORDER BELOW.

COMPLETE THIS BOX (Family name)	(Given name)	(Middle name)	(Alien registration number)
MASLENJAK	DIVNA		[redacted]

GOVERNMENT EXHIBIT 35 1:13CR126

Gov Ex 35-1

75

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0066

BIOGRAPHIC INFORMATION

Family name	First name	Middle name	SEX	DATE OF BIRTH (Mo. Day Yr.)	NATIONALITY	FILE NUMBER
MASLENJAK	RATKO		☒ MALE ☐ FEMALE	[redacted]	serbian	[redacted]

ALL OTHER NAMES USED (Including names by previous marriages)	CITY AND COUNTRY OF BIRTH	SOCIAL SECURITY NO.
None	ZENICA - BOSNIA	[redacted]

	FAMILY NAME	FIRST NAME	DATE, CITY AND COUNTRY OF BIRTH (If known)	CITY AND COUNTRY OF RESIDENCE
FATHER	MASLENJAK	RANKO	1933 ZENICA-BOSNIA	[redacted]
MOTHER (Maiden name)	JANKOVIC	MILENA	1941 ZENICA-BOSNIA	Deceased

HUSBAND OR WIFE (If none, so state)	FIRST NAME	BIRTHDATE	BIRTHPLACE	CITY AND COUNTRY OF BIRTH	DATE OF MARRIAGE	PLACE OF MARRIAGE
MIJATOVIC	DIVNA	[redacted]	[redacted]	ZENICA - BOSNIA	[redacted]	ZENICA

FORMER HUSBAND OR WIFE (If none, so state) FAMILY NAME (For wife, give maiden name)	FIRST NAME	BIRTHDATE	DATE & PLACE OF MARRIAGE	DATE AND PLACE OF TERMINATION OF MARRIAGE
None				

APPLICANT'S RESIDENCE LAST FIVE YEARS. LIST PRESENT ADDRESS FIRST.

STREET AND NUMBER	CITY	PROVINCE OR STATE	COUNTRY	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR
NJEGOŠEVA 27	JAGODINA	SRBIJA	YUGOSLAVIA	09	2002	PRESENT TIME	
[redacted]	[redacted]	[redacted]	[redacted]				

APPLICANT'S LAST ADDRESS OUTSIDE THE UNITED STATES OF MORE THAN ONE YEAR

STREET AND NUMBER	CITY	PROVINCE OR STATE	COUNTRY	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR
NJEGOŠEVA 27	JAGODINA	SERBIA	YUGOSLAVIA		92		02

APPLICANT'S EMPLOYMENT LAST FIVE YEARS. (IF NONE, SO STATE) LIST PRESENT EMPLOYMENT FIRST

FULL NAME AND ADDRESS OF EMPLOYER	OCCUPATION (SPECIFY)	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR
[redacted]	MASHINIST	10	00	PRESENT TIME	

Show below last occupation abroad if not shown above. (Include all information requested above.)

Ejection in Bosnia

THIS FORM IS SUBMITTED IN CONNECTION WITH APPLICANT'S REQUEST FOR:

☐ NATURALIZATION ☐ OTHER (SPECIFY):
☒ STATUS AS PERMANENT RESIDENT

SIGNATURE OF APPLICANT: x Ratko Maslenjak — DATE: 06-24-03

Are all copies legible? ☒ Yes

x Ratko Maslenjak

PENALTIES SEVERE PENALTIES ARE PROVIDED BY LAW FOR KNOWINGLY AND WILLFULLY FALSIFYING OR CONCEALING A MATERIAL FACT.

APPLICANT: BE SURE TO PUT YOUR NAME AND ALIEN REGISTRATION NUMBER IN THE BOX OUTLINED BY HEAVY BORDER BELOW.

COMPLETE THIS BLOCK (Family name)	(Given name)	(Middle name)	(Alien registration number)
MASLENJAK	RATKO		[redacted]

GOVERNMENT EXHIBIT
36
1:13CR126

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

DIVNA MASLENJAK,
Defendant.

Case No. 1:13-cr-126
Youngstown, Ohio
Tuesday, April 16, 2014
9:06 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE
BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

JURY TRIAL
* * *

[DIRECT EXAMINATION OF KARYN ZARLENGA (CONTINUED)]

Are you familiar with the requirements for becoming a naturalized citizen?

A. Yes, I am.

Q. Could you tell the court and the jury what those requirements are?

A. You have to be eligible to apply for naturalization, and you file a form for that. Some of the eligibility requirements are that you have to be at

least 18 years of age. You have to have been lawfully admitted to permanent residency. That means having adjustment of status or having that green card.

You have to be a permanent resident for at least five years prior to filing. You have to have lived continuously and been physically present in the United States for at least half of what we call a statutory period, and that's the five years preceding your filing of the application.

So you need to have lived at least 30 months out of that five years in the United States. And also have been continuously present, which means you can't have an absence of more than six months to a year. If you're gone for more than a year, you automatically have to wait four years and a day upon your return.

And one of the last requirements is that you also have to be a person of good moral character during not only the statutory period, but your entire life here in the United States, and even outside the United States.

Q. And the statutory period you refer to is how long?

A. It's the five-year period preceding the filing of the application.

Q. And are there any requirements regarding language, understanding the English language?

A. You do have to pass a test. It's an English literacy test. We give a writing test. You have to write a sentence in English. You have to read a sentence in English. And then we give you ten civics questions, and you have to get at least six of ten of those questions correct.

There is a way that you can get an exemption. You are automatically exempt from the English language requirement if you have been a permanent resident for at least 15 or 20 years and are 50 or 55 years of age, or if you have a medical disability that would prevent you from learning the English language.

Q. All right. Is there any requirement to swear allegiance or have some attachment to our Constitution?

A. Yes, there is.

Q. And what is that requirement?

A. It's an attachment to the Constitution and the laws of the United States of America. And essentially, that means that you need to abide by our laws, you know, file taxes. If you're a man and you're required to register for selective service, that's a requirement. Anything about abiding by laws of the United States.

Q. Are these requirements set out in the Immigration and Nationality Act and the regulations that are promulgated pursuant to that act?

A. Yes.

Q. Specifically with regard to good moral character, you've used that term a couple of times. What does that mean?

A. Good moral character can be a lot of different things. Essentially, it is, you know, not having — committing any crimes. There is certain criminal activity that would — that's going to preclude you from ever becoming naturalized, and that would be if you are ever convicted of murder or if you're convicted of an aggravated felony.

And an aggravated felony is a crime in which you've served at least a year in prison. If you did either of those two things, you would never be allowed to become a naturalized citizen.

Then there's other minor offenses that we would look at for good moral character. It could be failing to file your taxes. It could be a DUI conviction where you — you know, there may have been some property involvement or potentially hitting somebody or damaging another car or vehicle.

And then it could also be lying under oath to an immigration officer or lying to obtain an immigration benefit.

Q. Now, with regards specifically to lying under oath to an immigration officer or obtaining an immigration benefit, do you look beyond the statutory period?

A. Yes.

Q. And why is that?

A. Again, it goes towards good moral character. You know, the statutory period is one element that we're looking at when you're applying for naturalization. However, the law provides that we are allowed to look outside the statutory period as well. We want to make sure that you are eligible for all benefits along the way on your pathway to citizenship, so to speak.

Q. Can a fraudulently procured earlier benefit or application for an immigration benefit affect your agency's determination on the applicant's good moral character?

A. Yes.

* * *

Q. Why do you add those extra layers or steps before a person can naturalize, as compared to obtaining other benefits, such as lawful permanent resident?

A. As I mentioned yesterday, you know, naturalization is probably one of the biggest benefits the government can give to an individual; and, of course, we want to make sure that the person is, in fact, thoroughly qualified and eligible for the naturalization benefit, because it is more difficult to take it away in the event that we would find out at a later time that the person was not eligible.

Q. In this circumstance, did Divna Maslenjak naturalize to a United States citizen?

A. Yes, she did.

Q. And, again, I'd asked you could you identify the document. I would like to show you what's been marked as Government's Exhibit 38.

And can you identify what document this is?

A. Yes. This is her N-400 Application for Naturalization.

Q. All right. And can you tell us, when did she submit the application? Is there a place on there that it would indicate that?

A. Yes.

THE COURT: For the record — pardon me for interrupting.

MR. TRIPI: I am sorry.

THE COURT: This has already been shown to the jury; am I correct on that?

MR. HOLLINGSWORTH: I don't believe so, Your Honor.

THE COURT: Do you intend to ask —

MR. TRIPI: I'm not sure, Your Honor, but we would like to publish it at this time.

THE COURT: Let me ask Mr. Cahoon your position, sir.

MR. CAHOON: No objection, Your Honor.

THE COURT: Thank you, sir.

It's being published, Jury.

MR. TRIPI: Thank you, Your Honor.

THE COURT: You're welcome.

BY MR. TRIPI:

Q. Would the applicant be required to date the document?

A. Yes. When they submit the form, there is, again, a certification that they're certifying all the information is true and correct, and they sign and date it before they file the application.

Q. All right. And first, let's get to when it was actually received by your office. Is that on the first page underneath the bar code?

A. Correct. It looks like January 12th, 2007.

Q. All right. And on the last page, which would be Government Exhibit 38-10, did she sign the document?

A. Yes, she did. She signed it prior to filing it, which was on December 20th, 2006.

Q. And that's just based upon her own dating of the document; is that correct?

A. Correct.

Q. Can you tell me, is that just a signature to this ten-page application, or is there a requirement to certify its accuracy?

A. There's a requirement to certify it. It specifically says, "I certify under penalty of perjury that this application and the evidence submitted are all true and correct."

Q. And does that — strike that.

She did sign the document; is that correct?

A. Yes, she did.

Q. Why does the — why does the USCIS impose that duty on an applicant, if you know?

A. Well, as I mentioned, we do have the background checks that we do; however, the background checks are only as good as the information of the agency that's putting in information. So it's very important that somebody, when completing any application for immigration benefits, be as truthful and forthright as possible, so that we can ensure that they are, in fact, eligible for the benefit that they're seeking.

Q. Was Divna Maslenjak interviewed?

A. Yes, she was.

Q. By whom?

A. She was interviewed by Officer Guevara, Jackie Guevara.

Q. And is that indicated on this tenth page of the application?

A. Yes, it is.

Q. Is that in Part 13?

A. Yes, it is.

Q. All right. And when was she interviewed, if you can tell?

A. She was interviewed on July 20th of 2007.

Q. Was Mrs. Maslenjak required to again sign the document after the interview?

A. Yes.

Q. And did this again contain a certification?

A. Yes, it does.

Q. Now, you indicated earlier that the ordinary process is she would have been placed under oath by the adjudicator?

A. Yes, that is correct.

Q. So all of her statements during the interview would have been under oath?

A. Correct.

Q. And does that apply to — strike that.

The process for making changes or noting any changes would be conducted how on the paperwork?

A. During the interview, and I think I mentioned this as well yesterday, we're required to make any kind of annotations or changes in red pen, so that we know that the officer themselves made those corrections.

You'll see on the N-400 application, any questions that the officer asks are going to be tick marked in red. And, again, that indicates that the officer did, in fact, ask that question.

And if there were any changes, the officer would make — you know, make that change, perhaps it's a

name change or a "yes" to a "no." And then they also have to number that change.

And at the end of the interview, when they have the person sign the application again at the end of the interview, they would indicate that, you know, "You're signing again stating that all the information you gave is true and correct, including any changes or amendments that I made on your application."

Q. All right. And did she, in fact, sign underneath that certification language?

A. Yes, she did.

Q. And what certification language does apply to her in this application?

A. Again, that she is swearing and affirming and certifying under penalty of perjury that all the contents of the Application for Naturalization are true and correct.

Q. I'd like to turn your attention to Part 10, which begins on 38-6 of the N-400 form. Exhibit 38-6.

Can you tell us, what is Part 10 titled?

A. Part 10, it says, "Additional Questions," but really what this is about, it starts going into questions about someone's good moral character.

Q. All right. And, specifically, is there a series of questions at Part D — excuse me, Section D of Part 10, starting at Exhibit 38-8?

A. Again, these are questions about the person's good moral character.

Q. All right. And did she answer all of those questions?

A. Yes, she did.

Q. I'd like you to specifically look at Questions 23 and 24. And could you please read into the record what the information — excuse me; what the question is and what the answer was that she gave?

A. Question 23, "Have you ever given false or misleading information to any U.S. government official while applying for any immigration benefit or to prevent deportation, exclusion or removal?"

And she indicated "No." And, again, you can see by the red check mark that the officer did, in fact, ask the specific question.

Question Number 24, "Have you ever lied to any U.S. government official to gain entry or admission into the United States?"

And again she indicated "No," and it was asked, in fact, by the officer who conducted the interview.

Q. Why are these two questions asked?

A. Again, it goes back to good moral character. It goes towards whether or not this person is eligible for not only naturalization, but also, were they properly admitted or adjusted status properly to that of a permanent resident.

Q. Is it fair to state that fraudulent misrepresentations on earlier applications can affect the naturalization process?

A. Yes.

Q. And are you also indicating to the jury that it can undermine the ability to say that the lawful permanent residence was lawfully acquired?

A. Correct.

* * *

Q. Did there come a time when Divna Maslenjak was called by Ratko Maslenjak as a witness in his hearing on his asylum application?

A. Yes.

Q. Did she make any statements during her cross-examination which were inconsistent with statements she had made to obtain a refugee status?

A. Yes.

Q. And I want to direct your attention to three portions, three portions of the transcript.

* * *

Q. Could you please read both the questions and the answers that were given, and preface your reading by saying "Question" or "Answer" so that we know where it begins and ends?

A. "Question: Okay, so ma'am, when you returned to the Bosnian side, did you go by yourself?"

"Answer: Me and my children."

"Question: Where, where was your husband at the time?"

"Answer: He stayed in Serbia."

"Question: Did there ever come a time in 1993 when he came back to Bosnia?"

"Answer: Yes, he did go back."

Q. Turning your attention two pages later to page 118, lines 5 through 14. Again, was this cross-examination by government counsel at the time?

A. Yes, it was.

Q. And can you please read both the questions and answers — the questions placed to Divna Maslenjak and the answers that she gave?

A. This is part of the question:

"When your husband was returned to Bosnia, what city was he in, if you know?"

"Answer: In Bratunac."

"Question: And how do you know that?"

"Answer: I was in Bratunac also."

"Question: Did you stay together when both of you were in Bratunac?"

"Answer: First, I was alone at my mother's place, but then after he has been returned several times back to the Bosnia side, we lived together."

Q. Finally, did there come a point in the hearing when the judge, the immigration judge directed a series of questions to Divna Maslenjak?

A. Yes.

Q. And turning your attention to page 129, lines 17 through 22. Is this part of that transcript?

A. Yes.

Q. And these are questions that were being posed to her by the immigration judge; is that correct?

A. Correct.

Q. And can you please read the questions of the immigration judge and the answers that were given by Divna Maslenjak?

A. "Question: It wasn't true that he was in Serbia from 1992 to 1997, was it, ma'am?"

"Answer: No."

"Question: Were you aware that he was serving in the Bosnian Serb Army in 1995?"

"Answer: Yes."

Q. As an adjudications officer, were these admissions significant to you?

A. Yes.

Q. Why are they significant?

MR. CAHOON: Objection.

THE COURT: Overruled. You may answer, if you know the answer in your role as an adjudications officer.

THE WITNESS: Right. In my experience with the Republika Srpska events from 1991 to 1995, if you were part of that, there were some war crimes and other atrocities that were committed. And typically a person granted asylum would not have been involved in the Republika Srpska Army.

BY MR. TRIPI:

Q. Would that affect — well, did you also — is there any significance based upon your review of the original refugee application of Ratko Maslenjak and his wife?

A. Right. Upon further review, obviously, membership in the army itself dealt more with her husband. However, in going back and reviewing her file, it was —

MR. CAHOON: Objection.

THE COURT: Overruled.

THE WITNESS: — it was indicated that she failed to disclose certain information regarding her husband's membership in the army, as well as inconsistencies on

that biographical data sheet that we showed where he and she were both living at that time.

BY MR. TRIPI:

Q. Okay. So on his biographical data sheet, it did not indicate that they were living together in Bratunac; is that correct?

A. Correct, correct.

Q. Was his asylum claim eventually denied?

A. Yes, it was.

Q. Based upon your review of the —

MR. TRIPI: If I could have it switched back off of ELMO to the computer mode, Your Honor.

BY MR. TRIPI:

Q. Based upon your review of her original stated basis for refugee status that was provided across the seas, and based upon your review of other immigration documents, does her testimony call into question the accuracy of some of her answers in obtaining other benefits?

A. Yes.

MR. CAHOON: Objection. Move to strike.

THE COURT: Overruled. No, denied.

BY MR. TRIPI:

Q. Specifically with regard to Exhibit 33, can you state an opinion, as a supervisory adjudications officer in the Cleveland office, charged with the duty of processing LPR applications — or, excuse me, reviewing LPR applications and participating in the processing of those applications, can you tell

specifically, with regard to Exhibit 33 — which I would ask it be published to the jury —

THE COURT: It is being published.

MR. TRIPI: Thank you, Your Honor.

BY MR. TRIPI:

Q. — in Question 10, located on Exhibit 33-3, particular reference to the second half of that question after the word "or," in your opinion, would that have required, to be a truthful answer, the answer "yes" rather than "no"?

A. Yes.

Q. With regard to Exhibit 38 —

MR. CAHOON: Objection again, Your Honor. Object; move to strike the answer.

THE COURT: Overruled. Your motion to strike is denied.

BY MR. TRIPI:

Q. And with regard to Exhibit 38, the N-400 application, specifically on 38-8, at the bottom of the page, the two questions, 23 and 24.

In your opinion, based upon your position, your training, your experience and your review of both her file and Ratko Maslenjak's file, including her answers given during his asylum hearing, would the answers that she gave at that hearing have required a different answer to Questions 23 and 24?

A. Yes.

MR. CAHOON: Objection. Move to strike.

THE COURT: Thank you. Your objection is overruled; your motion to strike is denied; and your objections are preserved.

BY MR. TRIPI:

Q. I failed to ask you earlier, but when a witness appears at Immigration Court, are they placed under oath?

A. Yes.

Q. So the answers that she gave at Immigration Court were under an oath, as all these other answers were throughout her documentation?

A. That is correct.

Q. Based upon your experience and knowledge, does it call into question whether she lawfully obtained her LPR status, or lawful permanent residence status?

A. Yes.

Q. Does it — is there a requirement that naturalization be obtained not contrary to law?

A. Yes.

Q. And in your opinion, applying the answers that she gave in Questions 23 and 24, was she under a legal duty to provide truthful answers to that?

A. Yes.

MR. CAHOON: Objection.

THE COURT: Overruled.

THE WITNESS: Yes, she was.

BY MR. TRIPI:

Q. And were the answers that were being sought to those questions, did they affect her ability to naturalize lawfully?

A. Yes.

* * *

[DIRECT EXAMINATION OF JACKIE GUEVARA]

Q. Drawing your attention to Government's Exhibit 38-10, the tenth page of this document.

Is your name and signature on this document?

A. Yes, sir.

Q. And does that refresh your recollection of when you first saw this document?

A. I would have first seen it at interview. I interviewed this applicant for citizenship. And when I would complete — it's our procedure, when we complete the interview, we have to stamp our name and sign the application.

Q. And did you, in fact, sign it on July 20th, 2007?

A. Yes, sir.

Q. When you interview someone, what's your typical process?

A. We call them — we call them back. I introduce myself. I put them under oath. They have to swear the same oath that I swore here today.

We go through the entire application, go over their personal information, go over how they answered the questions on the application, go over their background, through the process, how they came into the United States, their travel, their good moral character, have they ever been arrested, their criminal background, where they live, how many — do they have children, are they married. It's pretty much just a condensed summary of their whole immigration life, basically.

Q. Let me ask you a few questions about that.

Why do you swear the person in?

A. Because we're asking them to tell the truth, and then we're basing our decision to the benefit that we're giving them on the fact that they are telling the truth, because all we really know is what they've given us and what's in the file.

Q. So you have to rely, in large part, on them providing you truthful answers?

A. Yes, sir.

Q. Now, you mentioned that you go through the information that's contained in the N-400. If the information is in there, why do you go through it again?

A. Just to give them another chance to make sure that they've answered everything correctly, that they understand the questions that they've been asked, to give them an opportunity to maybe add something that was not put on their application, clarify something that maybe they didn't understand when they were filling out the application.

Q. Taking a look at the first page of Government's Exhibit 38.

There are some red pen marks, are there not?

A. Yes.

Q. Who put those red pen marks there?

A. I did.

Q. How do you know that?

A. Because it's our policy and procedure that, number one, the adjudications officer always writes in red, so that we can differentiate from what we've put

on the application and what the applicant has put on the application.

And we mark everything that we've gone over and asked the applicant, so that later on down the road, if something — you know, if something comes up, we can know by procedure and what we do every time that, you know, yes, I did ask her her name, I did ask her, you know, if she's ever used a different name. These are questions that we ask every single applicant.

Q. So every time there's a red check mark on this document, it means that in the interview, you asked that follow-up question?

A. Yes, sir.

Q. And received the same answer?

A. Yes.

Q. What —

A. If I didn't — if I didn't receive the same answer, then I would have changed the answer in red and put an initial by it, showing that the answer was changed. And then usually, there would have been some other comments and notes in the file, or notes, actually, a little comment by that question saying, you know, why was it changed.

Q. And, in fact, drawing your attention to page 2 of this document, Part 3, Section E.

Is that your handwriting in red?

A. It is.

Q. And does that indicate that the defendant provided you additional information in the interview that wasn't there on the document?

A. Yes. She left that blank, and I asked her, and she gave the answer, "Bosnia," and I wrote it down in red.

Q. Turning your attention to page 4 of this document.

Is your handwriting in red on this page?

A. Yes, sir.

Q. And what does it say?

A. On the question about how many trips she's taken, that was left blank, and that's something that we have to — that we have to know, because it leads to physical and continuous presence in the United States. Therefore, I asked her how many trips she took. She said, "None." And then I wrote, "Claims none."

So that's an additional check and balance to make sure that if somebody else is — my supervisor is reviewing this application, they know that I asked that question and it was answered.

Q. So when you got the document, it was blank?

A. Yes.

Q. And you went back and you followed up because you wanted to make sure that every question was answered?

A. That she — you know, important — travel is an important part of the application process.

Q. Turning your attention to page 8 of this document.

Is your handwriting on this page?

A. Yes, sir.

Q. And what does it say?

A. In the part about additional questions about, "Have you ever been arrested," we ask, "Have you ever had any DUIs, driving under the influence of drugs or alcohol," and she claimed no, so, therefore, I wrote it down.

Q. And, again, that question was blank —

A. Yes.

Q. — and you filled it in to make sure that every question was answered?

A. Yes, sir.

Q. What is the heading for this subsection D on page 8?

A. The heading? Oh, "Good Moral Character."

Q. What role does an applicant's good moral character play in their application to become a U.S. citizen?

A. It is one of the most important roles. You know, we rely on that heavily, that they have good moral character to be a citizen of the United States.

Q. And what's your role, as an adjudications officer, in determining their moral character?

A. To make sure that there isn't any deviation from that, that they don't have anything that would make them ineligible to become a U.S. citizen.

Q. And looking at the right-hand section of this page, is it accurate to say that there is a red check mark by the questions in Section D?

A. Yes.

Q. And then drawing your attention specifically to Questions 23 and 24.

Are there red check marks by the answers to those questions?

A. Yes, sir.

Q. And what does that mean?

A. That means that I asked the question, and she answered it "no" in both cases.

Q. Turning to Question 23, which says, "Have you ever given false or misleading information to any U.S. government official while applying for any immigration benefit," did you ask that question to the defendant during this interview?

A. Yes, sir.

Q. And what was her answer?

A. Her answer was "No."

Q. And Question 24, "Have you ever lied to any U.S. government official to gain entry or admission into the United States," did you ask that question to the defendant in the interview?

A. Yes, sir.

Q. And what was her answer?

A. "No."

* * *

Q. Turning your attention back to Government's Exhibit 38-8.

Based on your training and experience, if during the interview she changed her answers to Questions 23 and 24, how would that have affected the interview and the application adjudication?

MR. CAHOON: Objection.

THE COURT: Overruled. You may answer.

THE WITNESS: Thank you.

Well, definitely there would have been further questioning. We probably would have done a sworn statement at that time. It would have been sent for a further review by our supervisors to decide whether she was actually eligible for citizenship, because that would question her eligibility if she had lied to an immigration officer or to any government official before.

BY MR. HOLLINGSWORTH:

Q. So if she had checked "yes" to either 23 or 24, would you have been authorized to grant her application for citizenship?

A. No, sir, not at that time.

* * *

[DIRECT EXAMINATION OF THOMAS GUASTINI]

Q. Why were you investigating the defendant?

A. It was brought to my attention that the defendant —

MR. CAHOON: Objection.

THE COURT: Overruled. He can testify to what he has personal knowledge of.

THE WITNESS: My investigation began when I was — when I was informed that the defendant gave testimony at an asylum hearing for her husband.

BY MR. HOLLINGSWORTH:

Q. What was it about that testimony that interested you?

A. She made statements to that — in that hearing that were contrary to what she initially put on her

refugee applications when she attempted to make entry into the United States.

Q. I'm going to draw your attention to statements that were earlier introduced into evidence on the overhead.

MR. HOLLINGSWORTH: And if we could have the ELMO, please.

BY MR. HOLLINGSWORTH:

Q. Are these the statements that you just testified about?

A. It's not on my screen at the moment.

THE COURT: Oh, sorry.

THE WITNESS: That's all right.

THE COURT: It should be on your screen, and also the jury now.

THE WITNESS: I do have it. Thank you.

I'm sorry, what was the question again?

BY MR. HOLLINGSWORTH:

Q. Taking them one at a time.

A. All right.

Q. Was this one of the statements that caused you to investigate the defendant?

A. Yes.

Q. What is it about this statement?

A. Well —

MR. CAHOON: Your Honor, I am going to make a continuing objection.

THE COURT: Your objection is noted.

And I remark for the record, this is a portion of Government's Exhibit 45, isn't it?

MR. HOLLINGSWORTH: Thank you, Your Honor. It is.

THE COURT: And your continuing objection to the use of what I believe are going to be the same three parts used earlier is preserved and overruled.

MR. CAHOON: Thank you, Your Honor.

MR. HOLLINGSWORTH: Thank you, Your Honor.

BY MR. HOLLINGSWORTH:

Q. Specifically, with respect to the testimony on page 16 of Government's Exhibit 45, that's on the ELMO, what was it about this statement that caused you to investigate the defendant?

A. On her application, she stated that her husband was living in Serbia while she was living in Bratunac, that they were not together. And according to this statement, it appeared as though that he was living with her in Bratunac.

Q. And turning your attention to page 14 of Government's Exhibit 45. What was it about this statement of the defendant that caused you to investigate her?

A. Same thing. She — again, she mentioned that they were separated from '92 through '97, he was living in Serbia and she was living in Bratunac, and here it says that he did come back to Bosnia in '93.

Q. Same question for page 27 of Government's Exhibit 45.

A. Yeah. She — she claimed that her husband was not in the military. As a matter of fact, she actually

made the statement that one reason they could not go back to Bosnia was because he did not serve in the military.

And here in the statement, the sworn statement that she gave to the court, she does admit that he did serve in the Bosnian Serb Army.

Q. What steps did you take during your investigation into the defendant's activities?

A. In regard to just the defendant?

Q. After learning of these admissions in the asylum hearing, what steps did you take?

A. Well, I got her A file and I looked at the A file just to — just to match everything up. And —

Q. What conclusions did you draw after having reviewed her A file?

A. Oh, she made false —

MR. CAHOON: Objection.

THE WITNESS: She made false statements.

THE COURT: Overruled.

THE WITNESS: Excuse me. The conclusions I made, that the statements that she made in the refugee application, that whole refugee process, 485 and on, that those were false statements.

BY MR. HOLLINGSWORTH:

Q. Other than her A file, did you review any other documents that helped support that conclusion, other than her A file?

A. Oh, I looked at her husband's A file.

Q. Anything else?

A. And I looked at the military documents. Pretty much, I had — I had — previously, I had conducted an investigation administratively for her husband, so I had quite an extended knowledge, background, regarding all the documents that he had provided. And so I, obviously, compared and contrasted.

Q. So you had familiarity with the facts, documents and circumstances?

A. Yes.

Q. And, in fact, were you a part of the initiation of the deportation proceedings of the defendant's husband?

A. Yes.

Q. When did those deportation proceedings commence?

A. I filed a notice to appear on, I believe it was December 13th, 2006.

Q. And did the defendant take any action after you filed that notice to appear?

A. Yes. One week later she filed an N-400 to become naturalized.

Q. Was there any significance in that sequence of events, in that timing?

MR. CAHOON: Objection.

THE COURT: You may answer if you believe there was a significance.

THE WITNESS: Yes. There's a huge significance.

BY MR. HOLLINGSWORTH:

Q. And what is that?

A. That when he was put in removal proceedings on December 13th, 2006, that got her — what she had to do was become naturalized. As things were going forward —

THE COURT: Well, what you should tell us is the significance to you, not to the defendant.

THE WITNESS: Oh, the significance to me? There was one more —

THE COURT: Well, in your official role.

THE WITNESS: In my official role as —

THE COURT: Yes.

THE WITNESS: Okay. The significance for me was that there was more documents that she was filing with the U.S. Government making false claims.

BY MR. HOLLINGSWORTH:

Q. And could she have, in fact, have filed an N-400 upwards of a year earlier?

A. Yes, yeah.

Q. Did the defendant file any other documents with the United States Government after you initiated the deportation proceedings?

A. Yes, she did. She was granted citizenship here in the United States. Then she filed an I-130 on behalf of her husband.

Q. And just briefly, again, what is an I-130?

A. It's a form that is filed to grant legal permanent status to a family member.

Q. And in this context, did the defendant need to be a naturalized U.S. citizen to file that I-130?

A. Yes.

Q. And did she, in fact, attach a copy of her Certificate of Naturalized Citizenship with that I-130?

A. She did.

* * *

Then, Mr. Cahoon, back to you. Do you have another motion for the court?

MR. CAHOON: I do, Your Honor. I would respectfully renew the Rule 29 motion, which I'd previously made a motion for acquittal asking the court, again, under the appropriate standard of Rule 29, to consider all the evidence and grant that motion.

Thank you, Your Honor.

THE COURT: You're welcome.

Any response from the government?

MR. HOLLINGSWORTH: I will, Your Honor. I would submit that based on all the evidence that the court has heard up to this point, the documents, the witnesses, the testimony, that there is sufficient evidence for a reasonable trier of fact to convict on the evidence put forward.

Specifically, the juxtaposition between the statements of the defendant at the time of the refugee status, and the military documents, in conjunction with the immigration documents that were filed after the fact, the stories just don't match, Your Honor.

The basis for her refugee application was that she feared returning because her husband didn't serve, and the evidence, viewed in the light most favorable to the government, shows that he did serve, from 1992 to 1995, that he was in the Bratunac Brigade, and that the basis for the refugee claim as the principal applicant is inconsistent with those documents.

So for those reasons, Your Honor, we think that the evidence supports a conviction for Count 1.

And as to Count 2, the unlawful use of an unlawfully procured naturalized citizenship, we feel like the evidence is sufficient to sustain a conviction on that count as well, because the evidence shows that the defendant, in fact, used her naturalized citizenship to file that I-130 to try to prevent the deportation of her husband.

THE COURT: Mr. Cahoon, would you like the last word?

MR. CAHOON: No, Your Honor. I know the court has heard the evidence, and I know the court will fairly consider it.

Thank you very much, Your Honor.

THE COURT: You're welcome, sir.

I have heard the evidence, and I have considered it, and I have continued to consider it through the defense case. And, again, observing the Rule 29 prohibitions against assessing the credibility of witnesses, weighing the evidence or drawing inferences from fact — of fact from the evidence, I simply decide whether the evidence viewed in the light most favorable of the government was sufficient for any rational trier of fact to find guilt beyond a reasonable doubt as to each count, and I do find that that evidence has been presented as to Count 1 and as to Count 2.

I deny the Rule 29 motion without prejudice, Mr. Cahoon, to it being raised again before this matter is entirely concluded.

Counsel, what I'd like to do now is give you a draft of the jury charge. It's very nearly done. I reviewed it

quickly before coming out, and there were just a couple of areas that I asked my law clerk to improve.

The verdict forms are something that I'd like you to weigh in on. I didn't ask, it's something I intend to change in my order, to ask along with the proposed instructions, for jury — for verdict forms.

This one can either be very long or very short. What you will see is one that pretty much tracks the indictment. And if you care to have it shortened in some way, you can tell me about that.

Of course, I've appropriately made the change regarding Count 1. I think it's appropriate you charge in the conjunctive, and usually instruct in the disjunctive. So I have changed the "and" between Question 23 and 24 to an "or." Because it's my belief that the conviction falls if either question was answered falsely.

I believe that the verdict form for Count 2 is only necessary if there is a guilty on Count 1. And you'll have an opportunity to see how the verdict forms read and to talk to me about that.

So if you will give me a few minutes to take another look at what's been drafted, and then I will provide that draft to you.

It's not very lengthy. In fact, the regular information probably takes up about as much space as the substantive part.

But what I'd like to do before we separate today is to go through it with you so that I have an understanding as to what you agree with, what you object to. I can make the final modifications.

Of course, we don't need the jury for any of that. And my question to you now is, is there any reason for me to keep the jury in the courthouse for the balance of the afternoon?

* * *

MR. TRIPI: Thank you, Your Honor. Your Honor, although we fully acknowledge that we submitted jointly proposed jury instructions, defense counsel and us met earlier in one of the witness rooms, and we were going through, and we believe that we discovered an errant way that we approached Count 1 of the indictment; and as such, we believe that there is going to need to be a somewhat major rewrite of, you know, our proposal at least, how Count 1 was handled, and it's not consistent with other naturalization frauds that we've done in the past.

To boil it down to its essence, the way it indicates that the elements are would be somewhat more similar to a simple making false statement claim, and it kind of misses the meaning of what it means to be contrary to law, and a false statement is one way to prove that.

So what we've done in the past — and I could, you know, in the alternative, I think Mr. Cahoon has agreed that we can all retire to the U.S. Attorney's Office down the street and we can try to draft something up to send to your law clerk for consideration overnight, or I could send a past set of jury instructions that went into the further explanation.

In the past, Your Honor, the elements were worded slightly differently, and we still got to the same point about making false statements, but we advised the jury of a statute, specifically Title 18, Section 1015,

which went to making false statements in the naturalization process.

Secondly, Your Honor, the reference in our past instructions has been to 1001. However, based on a recent Supreme Court opinion, our office has recommended staying away from 1001, if we can. I wouldn't recommend including that.

The other thing we had in there was a definition of "good moral character." Trial Attorney Gutridge also pointed out that there is a statute that specifically refers to the legal basis — bases required to obtain naturalization, which is Title 8, Section 1427 of the United States Code.

And some of that language has no application here, such as whether there was continuous residence between the application to the admission to citizenship.

But the first subsection of that refers to "continuous residence after lawful admission." So there's a reference to "lawful admission."

In the third subparagraph, or the third section of that, it talks about "during all periods of time, has the individual been a person of good moral character." And then we further defined in the past what "good moral character" is.

So I believe the recommendation — and this is without Mr. Cahoon having had an opportunity to look at this specifically. We think it should be worded slightly differently as far as how this should be presented to the jury, and there should be some reference to other statutes that control so the jury can be — actually make a determination, did she obtain her naturalization contrary to law, rather than just

assuming forward that all we're looking at is whether or not there were false statements that could be considered contrary to law.

* * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
UNITED STATES OF AMERICA,
Plaintiff,
v.
DIVNA MASLENJAK,
Defendant.
Case No. 1:13-cr-126
Youngstown, Ohio
Tuesday, April 17, 2014
8:21 a.m.
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE
BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE
JURY TRIAL

* * *

[CLOSING ARGUMENTS]

MR. HOLLINGSWORTH: Thank you, Your Honor.

Good morning. Ladies and gentlemen, on behalf of my co-counsel, Phil Tripi, I'd like to thank the court, the staff of the court, Mr. Cahoon, and most importantly, you, the members of the jury, for your time and for your attention over the last few days.

You will remember that I stood before you a few days ago and promised you that the evidence would show that the defendant and her claim to United States citizenship was built on a foundation of lies.

And you have learned a lot over the course of the last couple of days. You have learned a fair amount about the policies and the procedures and the documents involved in the U.S. immigration system.

You have heard from Todd Gardner and Karyn Zarlenga, U.S. immigration officials, who walked you through the various stages in the pathway to citizenship. And you learned that it all starts with being lawfully present in the United States. That's the foundation, and it all builds from there, to the pinnacle of immigration benefits that our country can bestow on an immigrant, that being the right to call yourself a United States citizen.

I also promised you that the evidence would show that that foundation of her claim to United States citizenship crumbled. It crumbled when she admitted under oath that her story about her basis for being a refugee wasn't true, that it was built on a foundation of lies.

What was defendant's claim to be a refugee? You saw her application for refugee status. You saw the IOM form, defendant's story. And what was that story?

We learned that the defendant's story was that she was in Bratunac beginning in 1992, and that her husband was in Serbia, in a different country, and that they were separated for five years because her husband dare not go back to Bosnia; otherwise, he would be forced to serve in the military. That was her story. That was her claim for refugee status. That was her claim in her request to the United States Government to provide her protection.

And that foundation crumbled when she admitted under oath: "Question: It wasn't true that he was in Serbia from '92 to '97, was it, ma'am?"

"Answer: No."

"Question: Were you aware that he was serving in the Bosnian Serb Army in 1995?"

"Answer: Yes."

Count 1 is all about her application for citizenship, her request to be granted all the rights, privileges, benefits and responsibilities of citizenship. And it all comes down to Questions 23 and 24 on the N-400:

"Have you ever given false or misleading information to any U.S. government official while applying for any immigration benefit?"

Her answer was "No." That was her answer on the form. And as you see by the red check mark, that was the answer she confirmed during the interview under oath with Jackie Guevara.

Question 24: "Have you ever lied to any U.S. government official to gain entry or admission into the United States?"

Her answer was "No." And, again, the question and answer were confirmed in the interview under oath with Jackie Guevara.

I told you that the government embraces its burden of proof. It's how our system works and it's how we ensure a right and just result.

The government has the burden of proof beyond a reasonable doubt that the defendant committed naturalization fraud, Count 1; and Count 2, that she used that unlawfully procured certificate of naturalization for any purpose.

So what did we learn from the evidence?

We learned that the defendant told the U.S. Government one story, that she was separated from her husband by a war zone, by countries, for five years.

We learned that they had to live apart for him to avoid being forced into military service.

And we learned that her claim to being a refugee was tied directly to the fact that her husband did not serve. She told the United States Government, "Help me. Protect me. I cannot go back to my home because my husband didn't serve. We would be persecuted by our former fellow countrymen because of his lack of service."

That was her claim to refugee status. That was her request to the United States Government to open up its arms and welcome her in and protect her.

And where was that evidence in the case? We saw it in the I-590 attachment, January 1998. We saw it. She certified that it was true when she signed that I-590. And we saw that she certified it again in the interview in April, months later, the same story.

You heard from Monica Rahmeyer. In April of 1998, she was in Serbia. She was interviewing families who were asking for the same thing, asking for the United States Government to open up its arms and protect them.

You heard from Monica Rahmeyer. She testified about the interview. She had notes, contemporaneous notes of the interview of what the defendant said.

Her testimony was that the defendant told the same story she told on paper in the application, the same story.

We heard that that interview was under oath. We heard that it was with a translator who spoke perfect English.

And we heard that Monica Rahmeyer has to rely on the honesty of the person sitting across from her. Monica Rahmeyer didn't have a treasure trove of military documents that she could go back to in 1998 to confirm or deny whether what the person across from her was telling her, whether it was true or not.

You heard Monica's testimony. She was over there to process these refugee applications, and sometimes she saw upwards of ten family units a day. She had to trust that the person was telling her the truth.

That's why the steps and policies and procedures were in place. That they put the person under oath, that they took notes, that they confirmed that the story that they received in the application matched up with the story that they got during the interview. It all came down to the honesty of the person sitting on the other side of the table. That was in April and January of 1998.

And, ladies and gentlemen, you saw during the course of the presentation of the evidence that the story was the same. Every time the United States Government asked about information about military service and about the location of the defendant and her husband before she applied for refugee status, it was the same every time.

And the refugee application in 1998 says that the defendant was forced to flee from Bosnia in 1997, but that her husband was forced to flee from Bosnia in 1992, consistent with the story in the notes, in the application, consistent with the story in the interview. That was in 1998.

She also submitted a biographical information sheet with that application, and it was the same story. The

defendant was in Bratunac from '92 to '97, but her husband was in Jagodina, Serbia, from 1992 to 1997, the same story.

The biographical information sheet from 2002, when they applied for lawful permanent resident status, same story. The defendant was in Bratunac from '92 to '97, but her husband was in Jagodina, Serbia, from '92 on, same story.

And the story was consistent when it came to military service. The defendant's husband was asked twice in his immigration documents to disclose all military service. And the answers that he gave were consistent with her story in 1998.

The only military service that was ever mentioned was the mandatory two-year service that every man of that particular generation had to go through when Yugoslavia was a united country. It wasn't surprising that it was on the document. It didn't raise any red flags.

But what do you — but what's not here, ladies and gentlemen? There's no mention of military service in the VRS in 1998. There's no mention of military service in the VRS in 2002. You see the blank lines underneath "Yugoslavian Army."

And, ladies and gentlemen, you've learned that in the immigration world, every time you submit something to the United States Government, it is under oath. Every signature, every interview, it is under oath.

And you learn the reason for that, because the people doing these jobs, working on behalf of the United States Government, have to be able to rely on the information that they receive from the applicant.

The immigrant is asking for a benefit, and we have to be able to trust them that the information that they provide is honest.

So the defendant swore that the things she submitted in 1998 were true. In 1998, she swore that she'd never been involved in assisting any other person entering the United States in violation of law, and that she's never procured or attempted to procure a visa by fraud or misrepresentation. Again, under oath, 1998.

In 2002, she swore to the United States Government that she never, by fraud or misrepresentation, ever sought to procure a visa or other document or entry into the United States. And, again, she swore that she had never done that, 2002.

In 2006, the N-400, the naturalization application, that's the heart of Count 1, she swore, in 2006, under penalty of perjury, that the application and everything in it is true and correct, including her answers to 23 and 24.

And then she swore again in 2007 when she had the interview.

And again in 2009, she certified under penalty of perjury that the foregoing is a true and correct document.

Every time she submitted something to the United States Government, she said it was true. But, ladies and gentlemen, it wasn't true, and you saw that. How do you know that?

We heard from Rick Butler. He walked you through his experience executing a search warrant at the headquarters of the Army of the Republika Srpska after the war was completed and while there was an

investigation about that army's activities in the war. So we've got the military records.

We also have the defendant's own words. You heard Karyn Zarlenga read the transcript of her sworn testimony under oath when she finally admitted that her story about being a refugee and the basis for that wasn't true.

We saw a bunch of military documents. I'm not going to belabor the point. We saw rosters. We saw monthly attendance. We saw documents providing promotions, we saw documents issuing uniforms, equipment, code names, telephones, and we saw the certifications that those documents were true and correct from the ICTY.

This document in particular is enlightening. It's on a specific day. A specific military commander of the Drina Corps, who was performing his usual rounds of an officer training, saw the defendant's husband, saw that his uniform was not up to standard, and ordered that he get a new one.

Ladies and gentlemen, these documents are not just lists of names in random documents. He was there, he was in the military the whole time, and the story that the defendant told wasn't true.

There was the list of the telephone numbers; there was the promotion; the issuance of the Motorola; the enrollment date.

And, ladies and gentlemen, I would ask you to pay particular importance to line 42. The date of the enrollment in the Army of the Republika Srpska for the defendant's husband was August of '92, the very same month and year that defendant claimed he had to

flee to another country, never to return, to avoid military service.

We also know that her story about being a refugee wasn't true because of her own words.

"Question: Did there ever come a time in 1993 when he came back to Bosnia?"

She had earlier told us that he fled in '92 and never came back.

Her answer on that day was, "Yes, he did come back."

"When your husband was returned back to Bosnia, what city was he in, if you know?"

Her answer was, "He was in Bratunac," the same city she was living in.

And, in fact, the follow-up question was, "How do you know that? How do you know he was in Bratunac?"

And she finally admitted, "I was in Bratunac also."

"Did you stay together when both of you were in Bratunac?"

"Answer: First I was alone at my mother's place, but then after he was returned several times back to the Bosnian side, we lived together."

That's completely inconsistent with the story that she told about the basis of her refugee status; completely inconsistent.

And finally, you have seen it before, but it bears showing again. "Question: It wasn't true that he was in Serbia from '92 to '97, was it, ma'am?"

Asked directly under oath, her answer was: "No, it wasn't true."

"Question: Were you aware that he was serving in the Bosnian Serb Army in 1995?"

Under oath, directly questioned, her answer:

"Yes, I was aware."

So, ladies and gentlemen, I submit to you, the answers to Questions 23 and 24 on the N-400 application for United States citizenship, under the subheading "Good Moral Character," these answers are false. They were false when they were put on paper. They were false when she repeated them in the interview under oath.

Because, in fact, the defendant had given false or misleading information to a U.S. government official while applying for an immigration benefit. That benefit was her refugee status, the foundation for her ability to be in the United States and for her application for citizenship.

Question 24, she had lied to United States government officials to gain entry into the United States. Her refugee application, it was a lie.

Ladies and gentlemen, the evidence also showed that the defendant used her certificate of naturalization after she got it improperly. And how did she use it? You saw evidence that she filed an I-130, application for Petition for an Alien Relative.

First she got her naturalization, and then she used it to try to prevent the deportation of her husband. The court instructed you that a violation of this statute would rest on any use of a naturalized citizenship. And this was the particular use that she put her citizenship to.

Ladies and gentlemen, you heard testimony from Karyn Zarlenga that citizenship, the ability to call yourself a United States citizen, and everything that goes with it, is the most important and most valuable benefit our government confers on people who weren't born here.

It's not a right. You can stay a lawful permanent resident your whole life. Becoming a citizen is different. It's special. And we require that people who ask to become citizens earn it. The right isn't given away. You have to earn it. You have to follow the rules and you have to tell the truth.

Ladies and gentlemen of the jury, I stand here before you right now, and I submit to you that after you've considered everything that you've heard, after you look at all the documents, after you discuss all the testimony you've heard, you will return a verdict of guilty on both Count 1 and Count 2.

Thank you for your time and for your attention.

THE COURT: Thank you, Mr. Hollingsworth.

On behalf of the defense?

MR. CAHOON: Your Honor, Counsel, Ms. Maslenjak, ladies and gentlemen of the jury.

First, ladies and gentlemen of the jury, on behalf of Ms. Maslenjak, I would like to thank you for your time hearing this case for, this is now the fourth day. You have heard a lot of information, a lot of testimony. You've paid attention. There's a lot to digest here.

Everyone has a job. As the court indicated to you earlier in this case, your job is an extremely important one, to be coequal with the judge and decide what happens here.

Ladies and gentlemen, this is the last time I will have an opportunity to speak with all of you. The judge mentioned this right near the beginning of the case, but the government gets to do opening statement first. They get to sit closest to you in the jury box. After I speak, the government gets to speak last.

And the reason is because the prosecution in a criminal case has the burden of proof. They get to go first and last because of that burden that they have.

I submit to you, on behalf of Ms. Maslenjak, that based on the evidence, the government has not proved this case beyond a reasonable doubt and Ms. Maslenjak is not guilty of these two crimes with which she's charged.

Because I will not have another opportunity to speak with you, no matter what Mr. Hollingsworth says in rebuttal, I will ask, after you hear what I say and you hear the rest of what he has to say, that you use your collective memory, collective reason and common sense, and decide the facts of what occurred or did not occur here.

The court has told you in the instructions that Ms. Maslenjak is presumed innocent unless that presumption is overcome by proof beyond a reasonable doubt. The court has instructed you as to what the elements are of proof beyond a reasonable doubt.

And part of that is, do you have a doubt based on reason and common sense? I submit that there are, based on the evidence, many doubts based on reason and common sense. I'd like to talk to you about the evidence in this case.

Monica Rahmeyer, her interview of Ms. Maslenjak took place in 1998; specifically, on or about April 22nd,

1998. You'll recall what Ms. Rahmeyer testified from the witness stand. She said that she had about a one-month assignment to interview people in her country that wanted to come to the United States. She testified that she interviewed, you'll recall, up to about 50 families a week.

You'll recall the testimony better than I will as far as how long those interviews took. I believe, I submit the evidence was somewhere around 30 or 45 minutes. Use your recollection, not what I tell you.

The families, you'll recall, would come in in their entirety, husband and wife, children, everybody would come into a room with Ms. Rahmeyer.

In the case of Ms. Maslenjak, there was a translator present. There were lots of questions asked. I ask you to use your reason and common sense.

You look at a lady that doesn't speak English, that's terrified, that wants to come to the United States and bring her family in a time of strife in her own country. That's an extremely stressful situation.

So not only is she terrified, sitting in a room with her whole family being interviewed, wanting more than anything to come to the United States, like anybody else in that situation, but she doesn't even speak the same language as the person asking the questions.

She's not filling out anything in her native language. She's not reading anything and signing it and saying, "This is my statement." She's not having anything read back to her, "Is this your statement?"

Instead, what the government is relying on are notes by a person who interviewed her just about 16 years ago, 1998, April of 1998.

The government is wanting you to use your reason and common sense and fully trust notes that somebody took in the situation I have just described 16 years ago.

I submit to you, the reliability of that is extremely in question. I told you in opening statement, there will be issues about reliability.

I talked, as you'll recall, to Ms. Rahmeyer in cross-examination. One of the things I asked her, you'll recall, I asked her from her transcript about her prior statement at a prior hearing.

And she testified, you'll recall, that if she had questions for the husband, she asked them to the husband, Mr. Maslenjak. If she had questions for Divna Maslenjak, she asked Divna.

She said in this case, "If the husband was there, I would definitely interview him separately in the same room. I would ask the questions to him directly and he would answer whatever questions were relevant to him. She would answer whatever questions were relevant to her."

You'll recall that Ms. Rahmeyer said that was her testimony. That's how she normally did things. She doesn't remember Divna Maslenjak, Ms. Rahmeyer doesn't. Ms. Rahmeyer doesn't remember Ratko Maslenjak. All she could testify about is, "This is my procedure. This is how I normally did it."

So if she's asking Ratko Maslenjak about his military service, she's asking about Ratko's military service, who is she going to ask, her or Ratko Maslenjak?

I submit that from the very testimony of Monica Rahmeyer, her normal procedure would be to ask Mr. Maslenjak.

Talking time, how long ago that was, Monica Rahmeyer has no recollection of any of this, just some notes, that's it.

The government is asking you to convict this person, in part at least, based on notes, speaking to different family members 16 years ago in the most stressful conditions you could imagine.

The government had a witness, Jackie Guevara, testify. You'll recall her. That's the person that did the N-400 interview. Specifically, you'll see it in your exhibits, but it's Government's Exhibit 38. That's really a key document in this case. And I'll tell you why.

You will see in the instructions, when you get them, and the court has already instructed you – this is page 11, Counsel – on naturalization fraud. The court will tell you Count 1 of the indictment says, "On or about August 3rd, 2007, in the Northern District of Ohio, Eastern Division, Divna Maslenjak, while a citizen of Bosnia-Herzegovina, and an alien, did knowingly procure, contrary to law, her naturalization, that is: Divna Maslenjak made material false statements on a Form N-400 Application for Naturalization by answering 'no' to Question 23 which asked whether the applicant had 'knowingly given false or misleading information to any U.S. government official while applying for any immigration benefit or to prevent deportation, exclusion or removal' or by answering 'no' to Question Number 24 which asked whether the applicant had 'ever lied to any U.S. government official to gain entry or admission into the United States' and answering the same during her interview for naturalization when Divna Maslenjak then knew well that she had lied to government officials when applying for her refugee status and her lawful

permanent resident status and thereby gained admission into the United States," then cites the code section.

So Count 1 is based on something that happened on or about August 3rd, 2007. Count 1 is based on a form that was signed that date by Divna Maslenjak, and an interview that took place that date with Divna Maslenjak.

And, again, I ask you to look very carefully when you deliberate in this case at Government's Exhibit 38, because I respectfully submit that based on the evidence, that's what Count 1 is all about, it's about that interview with Ms. Guevara.

You'll remember her testimony – Ms. Guevara. She said that in May of 2007, she had an interview with Divna Maslenjak. Do you remember that the interview didn't get completed? It didn't get completed because Mrs. Maslenjak was unable to sufficiently communicate in English.

Do you recall? This was without an interpreter. These N-400 interviews take place without an interpreter. So she was unable to communicate in English sufficiently during the interview, so she had to come back again in July of 2007. That's when it got approved. And the form is dated, for the interview date, July 20th, 2007, on Government's Exhibit 38.

So in May of 2007, again, Ms. Maslenjak could not sufficiently communicate in English for the interview to even take place, and yet in July, the interview takes place, no interpreter. This form is gone through by Jackie Guevara with Ms. Maslenjak, and it is signed by Ms. Maslenjak.

So, what do we know? Here's the form (indicating); you'll have it. Government's Exhibit 38 is ten pages long, ten pages. There are many, many boxes that had to get checked, a lot of stuff that has to get filled out on this form by Ms. Guevara during this interview with Divna Maslenjak.

You'll recall Ms. Guevara has no independent recollection, she testified, of the interview of Divna Maslenjak or what took place in that interview. She doesn't – she said – remember, I asked her, I said, "How many of these interviews have you done?" And I don't recall the number, but it was an awful lot that she said, an awful lot. She does lots and lots of those interviews.

And how long do these interviews last? Do you recall the testimony? Not a very long time. Minutes.

I am going to ask you to use your reason and common sense in considering what was going on in Divna Maslenjak's mind as this interview is taking place, where she is trying to get through talking to somebody in English during that interview.

Let me talk to you for a moment about – I'll come back to this, but let me talk to you for a moment about Divna Maslenjak and the English language.

You heard the testimony from Christine Williams. Christine Williams testified that she's a manager, or the manager, at Milich's, which is a restaurant in Barberton.

You've heard her testify, Divna Maslenjak started working there, I believe she said 2001. She'd been there for a long time. She works six days a week. She works in the evening. She prepares food. She cleans up.

Part of the reason that it's been a good place for Divna Maslenjak to work is because people there speak Serbian. There are not so many Serbian-speaking people there now, but when she started, you'll recall the testimony, this restaurant that seats 440 people, there were lots of Serbian people, because the people that own the restaurant are of Serbian descent.

So they hire a lot of Serbian people that came over like Divna Maslenjak. They give them an opportunity. And she has taken advantage of that opportunity, worked six days a week, 15 years now.

Her English, Ms. Williams testified, is very poor. It's even very poor now. But can you imagine how it was when she came to the United States? This is somebody that when they want her to prepare the food to put the right things on the plate, they give her – they give her slips. She knows what the slip says.

But she doesn't have to work with the customers or anybody else there that speaks English. She's insulated or isolated. She's by herself. So that's how she functions on her job.

Clearly, by this very, I submit, honest, decent, believable witness, Christine Williams, if Divna Maslenjak doesn't speak English well now, ladies and gentlemen, certainly she didn't speak English well in 1998, and certainly she didn't speak English well in 2007 when she went through this interview with Ms. Guevara.

Let's look at the questions themselves the government bases its case on. Twenty-three and twenty-four are on page 8 of Government's Exhibit 38.

"Question: Have you ever given false or misleading information to any U.S. government official while

applying for any immigration benefit or to prevent deportation, exclusion or removal?"

This almost sounds, and I don't make light of it, like one of those things when we hear something about buying a drug – getting some type of prescription for a drug that's advertised on television, then you hear all the possible side effects and they run right through them.

Again, "Have you ever given false or misleading information to any U.S. government official while applying for any immigration benefit or to prevent deportation, exclusion or removal?"

This was said to her in English several months after she couldn't even understand enough English to go through an interview and the interview had to be stopped. "Immigration benefit." I submit to you, do you think she understood what an "immigration benefit" meant in English at that time?

Twenty-four, "Have you ever lied to any U.S. government official to gain entry or admission into the United States?"

Did she understand what she was being asked? Did she understand what time period she was being asked? How long did it take to ask these questions? You'll see these check marks right down each one, "No," "No," "No," "No," "No," right down the list.

How much conversation, if any, how much explanation took place, if any, about these questions? And, again, using your reason and common sense, and that standard of proof that you apply in deciding the most important of your own affairs, as the judge has instructed you, is that enough to convict somebody for not being truthful on this application, knowingly not

being truthful? And it does have to be knowingly. And the court has instructed you on the elements of knowingly.

So what this case is based on, Count 1, again, is what happened on August 3rd, 2007. The government has the burden of proving its case, each and every element, beyond a reasonable doubt.

I submit to you that based on the evidence, as to Count 1, Ms. Maslenjak is not guilty.

As to Count 2, at the top of your verdict form that you'll see, it's a two-sided verdict form, but the top of the verdict form, after you turn the page on Count 1 and turn it over to Count 2, it states, per the court, "Complete this page only if your verdict on Verdict Form - Count 1 is guilty." Otherwise, you don't even consider that.

And I submit to you that if you did consider the evidence as to Count 2 is the same, for the reasons I've talked about, not guilty. But I submit that you don't even – based on the evidence, there's no need to go to Count 2, because Divna Maslenjak is not guilty of Count 1.

Ladies and gentlemen, you've heard lots of evidence over the past several days. You've heard evidence about a very serious war. You've heard evidence about military service. You've heard all kinds of evidence.

But, ladies and gentlemen, what I respectfully ask you to do when you deliberate in this case is -- because I know you will, but look at -- look at the instructions before you do anything. Please, consider them, look them over, look at that exhibit I talked to you about, use your reason and common sense, apply the law as the judge has instructed you, and I ask you, based on

the evidence and the law that applies, to find Ms. Maslenjak not guilty. Thank you.

THE COURT: Thank you, Mr. Cahoon.

Rebuttal close for the United States?

MR. HOLLINGSWORTH: Thank you, Your Honor.

Ladies and gentlemen of the jury, Mr. Cahoon has talked a lot about Ms. Maslenjak's proficiency in English. But her ability to speak English had nothing to do with the content and substance of her application to become a refugee.

That all came from her, and it came from her in Serbian, and it was translated into English so the U.S. government officials could read it, understand it and follow up.

Her ability to speak English had nothing to do with the answers she gave in Serbian during the refugee interview that was translated into English by a fluent English and Serbian speaker.

Those are the lies that we're talking about that form the foundation of her claim to U.S. citizenship. And it had nothing to do with her ability to speak English.

Ladies and gentlemen, I'd ask you to consider the consistency of the lie. From January 1998 when it was first put out there, the interview in April '98 where it was consistent, and every subsequent immigration document that was submitted that asked about location or military service. It was all consistent.

And I'd like you to consider the importance of the lie. You all know from your common sense that not every lie means the same. And the judge has instructed you that under the law, it doesn't matter whether the

lie was significant, and that is the law, and you should follow that law. But you all know from your common sense that not every lie is the same.

And in this case, when the defendant sat across from Monica Rahmeyer in Serbia in 1998 and told this lie, Monica Rahmeyer was over there working on your behalf, trying to ensure that she did her job and she did her job well, protecting our borders and making sure that she didn't allow anyone into the country that didn't deserve, that didn't qualify under the refugee law.

And so, ladies and gentlemen, you have to consider the definition of a refugee. What is a "refugee"? It is someone who has been kicked out of their home. It's a person without a country, a person in the most desperate situations and circumstances you can imagine. It's a person who has nowhere to turn, and they are asking for another country to protect them.

She was in a position trying to evaluate who gets a "yes" and who gets a "no."

And you heard testimony from Todd Gardner that there was a limit, that they couldn't let everyone in. And if someone acquired refugee status by fraud, that meant –

MR. CAHOON: Objection, Your Honor.

THE COURT: Overruled.

MR. HOLLINGSWORTH: – that meant fewer spots for someone else who was deserving. That's why the lie is important. That's why we require people to tell the truth.

This may be a lie that is rooted in a document, but this is not a victimless crime. The lies had consequences, and the lies were important.

Thank you.

* * *

RECORD AND BRIEFS

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No. 16-309

IN THE
Supreme Court of the United States

DIVNA MASLENJAK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Whether the Sixth Circuit erred by holding that a naturalized American citizen can be stripped of her citizenship in a criminal proceeding based on an immaterial false statement.

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U.S. Const. art. I, § 3, cl. 3 29

U.S. Const. art. I, § 8, cl. 4 1

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Other Authorities

Blackstone, William,
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Coke, Edward.
Institutes (6th ed. 1680) 33

Garner, Bryan A.,
A Dictionary of Modern Legal Usage
(2d ed. 1995) 21

Hale, Edward Everett,
The Man Without a Country,
Atlantic Monthly, Dec. 1863 26

Random House Dictionary of the English Language
(2d ed. 1987) 20

Webster's Ninth New Collegiate Dictionary (1988) .. 21

INTRODUCTION

This Court has long recognized that American citizenship is a "precious right," and that "[i]t would be difficult to exaggerate its value and importance." *Schneiderman v. United States*, 320 U.S. 118, 122 (1943). While many Americans are blessed with that right by virtue of their birth, many others have obtained it by virtue of naturalization. Throughout our history, naturalized Americans have enriched all areas of our national life, including business, government, law, science, sports, and the arts. A naturalized citizen is as much a citizen as any other: "[c]itizenship obtained through naturalization is not a second-class citizenship." *Knauer v. United States*, 328 U.S. 654, 658 (1946).

Although the Constitution expressly authorizes Congress "to establish a uniform Rule of Naturalization," U.S. Const. art. I, § 8, cl. 4, it contains no corresponding general authority to strip Americans—either natural-born or naturalized—of their citizenship. That is no oversight: "In our country the people are sovereign and the Government cannot sever its relationship to the people by taking away their citizenship." *Afroyim v. Rusk*, 387 U.S. 253, 257 (1967). Thus, as a general matter, the only way American citizenship can be lost is "by the voluntary renunciation or abandonment by the citizen himself." *Id.* at 266. There is but one exception to that rule: "naturalization unlawfully procured can be set aside." *Id.* at 267 n.23 (citing cases).

And even that exception has been narrowly circumscribed. Because denaturalization seeks to deprive an American citizen "of the priceless benefits

that derive from that status," *Schneiderman*, 320 U.S. at 122, "naturalization decrees are not lightly to be set aside," *Costello v. United States*, 365 U.S. 265, 269 (1961) (internal quotation omitted). This Court "presume[s] that Congress was motivated" by "a desire to secure the blessings of liberty ... to all those upon whom the right of American citizenship has been conferred by statute, as well as to the native-born." *Schneiderman*, 320 U.S. at 120. Thus, in a denaturalization proceeding, "the facts and the law should be construed as far as it is reasonably possible in favor of the citizen." *Id.* at 122.

That did not happen here. The Sixth Circuit held below that a naturalized American can be stripped of her citizenship in a criminal proceeding based on an *immaterial* false statement. But nothing in the relevant statute authorizes, much less compels, that result. To the contrary, the statute makes it a crime to "knowingly *procure*[]" naturalization "contrary to law." 18 U.S.C. § 1425(a) (emphasis added). The Sixth Circuit never explained how someone could "procure" naturalization based on an immaterial false statement. As a general matter, after all, a false statement is material only "if it has a natural tendency to influence, or was capable of influencing, the decision of the decisionmaking body to which it is addressed." *Kungys v. United States*, 485 U.S. 759, 770 (1988) (internal quotation omitted). If a statement has no tendency or capability to influence a naturalization decision, by definition it cannot "procure" that decision. That simple textual point is the beginning and the end of this case.

The Sixth Circuit concluded otherwise by observing that "the term 'material' is found nowhere

in § 1425(a)." Pet. App. 8a. But that observation, while true, misses the point. The statute *does* use the words "procure ... contrary to law," and those words, naturally read, require a causal link—"procurement"—between the underlying violation of law and the naturalization decision. The district court here dispensed with that causal link by instructing the jury that it could convict petitioner by finding that she (1) "obtained United States citizenship," and (2) "acted in violation of at least one law governing naturalization." Pet. App. 85a. In other words, the jury was not required to find that the underlying violation of law *procured* the naturalization. By upholding petitioner's conviction under these instructions, the Sixth Circuit essentially read the unlawful procurement element out of the unlawful procurement statute.

Although the Sixth Circuit's erroneous interpretation of Section 1425(a) provides reason enough to reverse the judgment, the court committed a second—quite similar—error in interpreting 18 U.S.C. § 1015(a), one of the predicate offenses alleged here. According to the Sixth Circuit, that crime also must be interpreted to encompass immaterial false statements because it does not include the word "material." But that simplistic interpretation fails to take proper account of "the improbability that Congress intended to impose substantial criminal penalties on relatively trivial or innocent conduct." *United States v. Wells*, 519 U.S. 482, 498 (1997). A proper textualist approach requires analysis and understanding of the background legal norms that inform the meaning of statutory text. That error too warrants reversal of the judgment below.

As a result of her conviction in this case, petitioner—a naturalized American originally from Bosnia—was stripped of her citizenship and deported from this country. But this case is not just about her citizenship rights, but about the citizenship rights of all naturalized Americans. Precisely because those rights are so precious, there is no basis to conclude that Congress did (or constitutionally could) provide for them to be lost as the result of an immaterial false statement. Accordingly, this Court should reverse the judgment.

OPINIONS BELOW

The Sixth Circuit's opinion is reported at 821 F.3d 675, and is reprinted in the Petition Appendix ("Pet. App.") at 1-39a. The district court's colloquy with counsel on the jury instructions is unreported, and relevant excerpts are set forth at Pet. App. 75-82a. The district court's jury instructions are unreported, and relevant excerpts are set forth at Pet. App. 83-89a. The district court's unreported denaturalization order is set forth at Pet. App. 95-96a.

JURISDICTION

The Sixth Circuit entered judgment on April 7, 2016, Pet. App. 1a, and denied a timely petition for rehearing *en banc* on May 27, 2016, Pet. App. 40a. On August 3, 2016, Justice Kagan extended the time within which to file a petition for a writ of certiorari until and including September 26, 2016. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PERTINENT STATUTORY PROVISIONS

18 U.S.C. § 1425 provides in relevant part:

> Whoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person ... Shall be fined under this title or imprisoned not more than [10 to 25 years], ... or both.

18 U.S.C. § 1015 provides in relevant part:

> Whoever knowingly makes any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship, or registry of aliens ... Shall be fined under this title or imprisoned not more than five years, or both.

8 U.S.C. § 1451(a) provides in relevant part:

> It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any district court of the United States in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation ....

8 U.S.C. § 1451(e) provides in relevant part:

> When a person shall be convicted under section 1425 of Title 18 of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled.

STATEMENT OF THE CASE

A. Factual Background

Petitioner Divna Maslenjak, an ethnic Serb, was born and raised in a predominantly Serb village in modern-day Bosnia. Pet. App. 3a. After the collapse of the former Yugoslavia in the early 1990s, clashes broke out between Bosnia's majority Muslim population and its minority Serbs, and members of each group reported persecution by the other. *Id.*

In April 1998, Mrs. Maslenjak, along with her husband and their two children, met in Belgrade, Yugoslavia (now Serbia), with an American immigration official designated to assist refugees from Bosnia's ethnic strife. *Id.* As that official testified below, the refugees she interviewed in that position "were pretty much always ethnic Serbs that had been living in Bosnia and they were ... basically forced out of Bosnia, from ... their place they lived because of ethnic cleansing." Pet. App. 51a.

And that was true for Mrs. Maslenjak: as the immigration official testified, the basis for Mrs. Maslenjak's claim of refugee status for her family was that "because they were ethnic Serbs, they had

been forced to flee their home—the place they lived in Bosnia, and that they were not able to go back because they feared, basically, for their life, which was plausible." Pet. App. 56a; *see also* Pet. App. 58a (Mrs. Maslenjak's refugee application based on "fear that [her family] would be mistreated on account of their ethnicity if they returned back to their home"); Pet. App. 64a (Trial Exhibit 26) (stating that Mrs. Maslenjak and her family "are registered refugees in [Yugoslavia]," who "see no prospects for local integration on account of their refugee status," and "fear maltreatment on account of their ethnicity if they return to their home village"). In addition, the immigration official testified that Mrs. Maslenjak stated that, after a temporary stay in Yugoslavia, she and her children "had gone back to Bosnia, but a different part that was Serb held; but the husband did not return, because he was afraid that he would be forced to serve in the [Bosnian Serb] military if he went back to that part of Bosnia." Pet. App. 56-57a. The latter statement was untrue: Mrs. Maslenjak and her children in fact had lived with Mr. Maslenjak in Bosnia during that period, and he had served in the Bosnian Serb military.

Mrs. Maslenjak and her family were granted refugee status in 1999 and immigrated to the United States in 2000. Pet. App. 4a. They settled near Akron, Ohio, where two of Mrs. Maslenjak's sisters, who were also refugees, were living.

In December 2006, Mrs. Maslenjak applied for naturalization. Pet. App. 65-74a. As part of the application process, she was asked numerous questions, including whether she had "ever given false or misleading information to any U.S.

government official while applying for any immigration benefit." Pet. App. 72a (Question 23). A separate question asked whether she had ever "lied to any U.S. government official to gain entry or admission into the United States." *Id.* (Question 24). Mrs. Maslenjak answered both questions in the negative. *See id.* She obtained United States citizenship on August 3, 2007. Pet. App. 5a.

Shortly before Mrs. Maslenjak applied for citizenship, her husband was arrested on charges of making a false statement on government documentation. Pet. App. 4-5a. Specifically, the Government charged him with failing to report on his immigration application that he had served in the Bosnian Serb military during the Bosnian civil war. *Id.* He was convicted in 2007 and, because his conviction subjected him to removal, taken into custody by U.S. Immigration and Customs Enforcement. Pet. App. 5a.

In an effort to avoid her husband's removal, Mrs. Maslenjak testified at her husband's asylum hearing in April 2009. *Id.* In that testimony, Mrs. Maslenjak admitted that her husband had served in the Bosnian Serb military during the Bosnian civil war, that the family had lived together in Bosnia (although not in their home village) from 1992 to 1997, and that she had misrepresented these facts during her 1998 interview for refugee status. Pet. App. 5-6a.

B. Proceedings Below

In March 2013, a grand jury indicted Mrs. Maslenjak for violating 18 U.S.C. § 1425(a), which makes it a crime to "knowingly procure[]" naturalization "contrary to law." *See* Pet. App. 41-

42a. As relevant here, the indictment charged Mrs. Maslenjak with making "material false statements" in response to Questions 23 and 24 of her 2006 naturalization application, on the theory that she "then well knew that she had lied to government officials when applying for her refugee status" in 1998. Pet. App. 42a.

A major issue at trial was the impact, if any, of Mrs. Maslenjak's 1998 statements about her husband's military service on her application for refugee status. The Government tried to show that Mrs. Maslenjak, who acted as the Primary Applicant ("PA") for her family, had been granted refugee status based on those statements. *See, e.g.*, Pet. App. 44-45a. Mrs. Maslenjak, in contrast, tried to show that she had been granted refugee status based on fear of ethnic persecution by Muslims in Bosnia. *See, e.g.*, Pet. App. 64a.

Although the indictment charged Mrs. Maslenjak with making "material false statements," Pet. App. 41a, and the Government "adduced proof at trial relevant to the materiality element," Pet. App. 26a, the Government took the position at trial that proof of a material false statement was not necessary for a conviction under either § 1425(a) or 18 U.S.C. § 1015(a), which proscribes "mak[ing] any false statement under oath" in a naturalization proceeding and served as a predicate offense for the § 1425(a) charge in this case, Pet. App. 81-82a.[1] Over Mrs.

---

[1] In addition to charging Maslenjak with a predicate violation of 18 U.S.C. § 1015(a), the Government charged her with a predicate violation of 8 U.S.C. § 1427(a)(3), which makes "good moral character" a requirement for naturalization. *See* Pet.

Maslenjak's objection, *see* Pet. App. 75-82a, the district court (Pearson, J.) sided with the Government, and instructed the jury:

> Count 1 of the indictment charges the defendant with violating Section 1425(a) of Title 18 of the United States Code.
>
> * * *
>
> In order to prove defendant guilty of naturalization fraud, the government must prove each of the following elements beyond a reasonable doubt.
>
> * * *
>
> First, that defendant procured naturalization;
>
> Second, defendant procured her naturalization contrary to law; and
>
> Third, defendant acted knowingly.
>
> Element Number 1: Procured Naturalization. The government must prove beyond a reasonable doubt that defendant procured naturalization. To establish this element, the government must prove that defendant obtained United States citizenship.
>
> * * *

App. 9a. A person cannot satisfy that requirement if she "has given false testimony for the purpose of obtaining any benefits under this chapter," 8 U.S.C. § 1101(f)(6), regardless of whether that "testimony" is material, *see Kungys*, 485 U.S. at 779-82.

> Element Number 2: Contrary to Law. In order to prove that defendant acted "contrary to law," the government must prove that defendant acted in violation of at least one law governing naturalization.
>
> * * *
>
> Element Number 3: Knowingly. To act knowingly means to act intentionally and voluntarily, and not because of ignorance, mistake, accident or carelessness.

Pet. App. 84-86a.

With respect to Element Number 2 ("contrary to law"), the court explained that a predicate offense was 18 U.S.C. § 1015(a), which "prohibits an applicant from knowingly making any false statement under oath, relating to naturalization." Pet. App. 85a. And the court specifically instructed the jury that, in order to convict, it did not have to find that any such false statement was material:

> A false statement contained in an immigration or naturalization document *does not have to be material* in order for the defendant to have violated the law in this case. Even if you find that a false statement *did not influence* the decision to approve the defendant's naturalization, the government need only prove that one of the defendant's statements was false.

Pet. App. 86a (emphasis added).

During deliberations, the jury sent the court the following note:

> At start of trial jury was told that Divna applied for refugee status due to a fear of persecution due to her husband not serving in the military during the war.
>
> On Exhibit #26 it states that Divna was applying for refugee status due to fear of persecution due to her ethnicity.
>
> What was her refugee status granted on?
>
> Fear of not serving?
>
> Or fear of ethnic backlash[?]

Pet. App. 90a. The court responded by telling the jury:

> You must make your decision based only on the evidence you saw and heard here in court. ... You may also rely on your collective memories. ... You have now what you need to decide the case.

Pet. App. 89a.

The jury returned a guilty verdict both on Count 1 (violation of § 1425(a), which results in automatic loss of citizenship), Pet. App. 91-92a, and Count 2 (violation of 18 U.S.C. § 1423, which does not result in loss of citizenship), Pet. App. 93-94a.[2] The jury's

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[2] Count 2 charged Mrs. Maslenjak with a violation of 18 U.S.C. § 1423, which provides that "[w]hoever knowingly uses for any purpose any ... certificate of naturalization ... unlawfully issued or made ... showing any person to be naturalized or admitted to be a citizen, shall be fined under this title or imprisoned not more than five years, or both." Pet. App. 42a. Because that Count applies only insofar as a certificate of naturalization was "unlawfully issued," it is derivative of Count 1, which involves the validity of the underlying certificate. Indeed, with the

verdict on Count 1 was a general one, and did not specify which of the two charged predicate offenses (18 U.S.C. § 1015(a) and 8 U.S.C. § 1427(a)(3), *see supra* n.1) Mrs. Maslenjak had committed. *See* Pet. App. 91-92a. Shortly thereafter, the district court entered an order revoking Mrs. Maslenjak's citizenship under 8 U.S.C. § 1451(e) as a mandatory and automatic consequence of her conviction under Section 1425(a). Pet. App. 95-96a; *see generally United States v. Latchin*, 554 F.3d 709, 715-16 (7th Cir. 2009); *United States v. Inocencio*, 328 F.3d 1207, 1210 (9th Cir. 2003); *United States v. Moses*, 94 F.3d 182, 187-88 (5th Cir. 1996); *United States v. Maduno*, 40 F.3d 1212, 1217-18 (11th Cir. 1994); *cf. Fedorenko v. United States*, 449 U.S. 490, 517 (1981) (in civil context, "district courts lack equitable discretion to refrain from entering a judgment of denaturalization against a naturalized citizen whose citizenship was procured illegally or by willful misrepresentation of material facts.").

Mrs. Maslenjak appealed her conviction and the revocation of her citizenship, but the Sixth Circuit affirmed. Pet. App. 1-39a. As relevant here, the court held, "[b]ased on the plain language of the statute as well as the overall statutory scheme for denaturalization," that "proof of a material false statement is not required to sustain a conviction

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parties' agreement, the district court instructed the jury that it could convict Mrs. Maslenjak on Count 2 *only* if it found her guilty on Count 1. *See* Pet. App. 93a ("Complete this page only if your verdict on Verdict Form - Count 1 is guilty."). Thus, if this Court were to reverse the judgment as to Count 1, it follows that Count 2 would necessarily fail as well.

under 18 U.S.C. § 1425(a)," Pet. App. 7a, or a predicate offense at issue here, 18 U.S.C. § 1015(a), Pet. App. 18-19a, 21a, 24a.

With respect to the statutory text, the court noted that "the term 'material' is found nowhere in § 1425(a)." Pet. App. 8a. "Without statutory support for an element of materiality," the court declared, "we are hard-pressed to conclude that materiality is an element of the offense under 18 U.S.C. § 1425(a)." *Id.* Similarly, "[a] material false statement is not an element of the crime under § 1015(a)." Pet. App. 21a; *see also* Pet. App. 18-19a.

And with respect to the statutory structure, the court stated that the federal immigration laws create "what are essentially two alternative paths for denaturalization," one civil and one criminal. Pet. App. 10a. The civil path includes an express materiality requirement for false statements. *Id.* (citing 8 U.S.C. § 1451(a) and *Kungys*, 485 U.S. at 772-73). The criminal path does not. Pet. App. 12-13a. Rather than construing these two paths in tandem, the Sixth Circuit concluded that "the explicit requirement of materiality under one approach but not the other is actually consistent with a two-track statutory scheme for denaturalization":

> In a civil denaturalization suit, the government can bring its case simply by filing an equitable petition, proceed as in a civil case, and satisfy a lesser burden of proof than beyond a reasonable doubt. In light of the slightly lower burden of proof, Congress has required the government to prove that the naturalized citizen has

> concealed a material fact. By contrast, in a criminal case resulting in denaturalization, the government must prove the charge under 18 U.S.C. § 1425 beyond a reasonable doubt while meeting the demands of constitutional due process. Congress has not required proof of materiality in that scenario arguably because of the higher burden of proof, the additional safeguards for the naturalized citizen's constitutional rights, and the broad sweep of § 1425 itself.

Pet. App. 29a.

In so holding, the Sixth Circuit recognized that Mrs. Maslenjak's position "finds support in a number of other circuit decisions holding that materiality is an implied element of 18 U.S.C. § 1425(a)," but "[b]y and large" deemed these decisions "unpersuasive." Pet. App. 22-23a (citing *United States v. Munyenyezi*, 781 F.3d 532, 536 (1st Cir. 2015); *United States v. Mensah*, 737 F.3d 789, 808-09 (1st Cir. 2013); *Latchin*, 554 F.3d at 712, 713 n.3; *United States v. Aladekoba*, 61 F. App'x 27, 28 (4th Cir. 2003) (*per curiam*); *United States v. Agyemang*, No. 99-4496, 230 F.3d 1354, 2000 WL 1335286, at *1 (4th Cir. Sept. 15, 2000) (*per curiam*); *United States v. Agunbiade*, No. 98-4581, 172 F.3d 864, 1999 WL 26937, at *2 (4th Cir. Jan. 25, 1999) (*per curiam*); *United States v. Puerta*, 982 F.2d 1297, 1301 (9th Cir. 1992)).

Judge Gibbons concurred "with some reluctance," and characterized the result as "troublesome." Pet. App. 39a (concurring opinion). As she explained, "[i]nitially, I was not inclined to differ from our sister

circuits' interpretation of 18 U.S.C. § 1425(a)," but ultimately was "persuaded ... that the view most faithful to the statute is that materiality is not an element" of that provision. *Id.* She emphasized, however, that "I am uncertain what goal Congress intended to further by omitting materiality" from the requirements for criminal denaturalization, and noted that she had "located no other federal criminal statute that punishes a defendant for an immaterial false statement." *Id.* Nor, for that matter, had she "located any analogous context in which the elements of a crime are less onerous than the elements of the related civil penalty proceeding." *Id.* Indeed, "the government, in response to questioning at oral argument, was unable to articulate any interest of the United States in prosecuting statements that are immaterial." *Id.*

Mrs. Maslenjak then sought a writ of certiorari, which this Court granted on January 13, 2017. In October 2016, while the petition was under consideration, Mrs. Maslenjak and her husband were deported from the United States to Serbia.

SUMMARY OF ARGUMENT

As a result of her conviction under 18 U.S.C. § 1425(a), and subsequent denaturalization under 8 U.S.C. § 1451(e), petitioner Divna Maslenjak was stripped of her American citizenship and deported from this country. She now lives halfway around the world, far removed from her children in Ohio. This Court should reverse her conviction for two separate and independent reasons.

First, Section 1425(a) requires the Government to prove that a defendant "procure[d] or attempt[ed] to procure" American citizenship "contrary to law." As

a matter of law and logic, that "procurement" requirement obliges the Government to establish some causal nexus between an underlying violation of law and the procurement (or attempted procurement) of American citizenship. And where, as here, the underlying violation of law is a false statement, the Government must establish at a minimum that the statement was material, *i.e.*, that it had some tendency to influence the naturalization decision. By definition, an immaterial statement cannot "procure" an official decision. This interpretation not only harmonizes the civil and criminal denaturalization provisions, but avoids the potential constitutional problem that would arise by effectively reading the unlawful procurement element out of the unlawful procurement statute.

Second, an underlying predicate offense charged here—18 U.S.C. § 1015(a)—also requires the Government to prove that the alleged false statement was material. Although Section 1015(a) does not contain an express materiality requirement, that point alone does not end the inquiry. Rather, this Court generally, and properly, presumes that Congress does not intend to criminalize trivial matters like immaterial statements: *de minimis non curat lex*. To be sure, particular criminal provisions may include language that effectively limits their scope even in the absence of a materiality requirement, and thus obviates the need to read in such a requirement. But Section 1015(a) contains no such limiting language, and thus should be construed to require a material false statement to prevent it from becoming an open-ended crime.

ARGUMENT

The Sixth Circuit Erred By Holding That A Naturalized American Citizen Can Be Stripped Of Her Citizenship In A Criminal Proceeding Based On An Immaterial False Statement.

This case presents the question whether the Government can strip a naturalized American of her citizenship based on a false statement that was not material to the naturalization process and thus could not have procured her citizenship. The Sixth Circuit answered that question in the affirmative, and thereby erred as a matter of law.

At issue here is the interplay of several statutory provisions. The first is located in Title 8 ("Aliens and Nationality"), and governs "[r]evocation of naturalization." 8 U.S.C. § 1451. As relevant here, that provision directs a court to "revoke, set aside and declare void the final order admitting [a naturalized American] to citizenship" when that person "shall be convicted under section 1425 of title 18 of knowingly procuring naturalization in violation of law." 8 U.S.C. § 1451(e).

Section 1425 of title 18, in turn, is part of the federal criminal code. That provision, which is entitled "Procurement of citizenship or naturalization unlawfully," specifies in relevant part that "[w]hoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person ... Shall be fined under this title or imprisoned not more than [10 to 25 years], ... or both." 18 U.S.C. § 1425(a). It thus creates a naturalization "procurement" crime distinct from, but derivative of, an underlying violation of law.

Proof of a predicate violation of law is *necessary*, but not *sufficient*, for conviction under Section 1425(a).

To satisfy the "contrary to law" element of Section 1425(a) in this case, the Government alleged two different predicate offenses. The first—and the one at issue here—was a violation of 18 U.S.C. § 1015(a), which prohibits "knowingly mak[ing] any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship, or registry of aliens." The second was a violation of 8 U.S.C. § 1427(a)(3), which prohibits obtaining naturalization without "good moral character."

By holding that Mrs. Maslenjak could be convicted under Section 1425(a) and thus lose her citizenship under Section 1451(e) based on an immaterial false statement, the Sixth Circuit erred on two separate and independent grounds. *First*, the Sixth Circuit misconstrued Section 1425(a) by upholding a conviction where the Government failed to prove a causal link between the predicate violation and the procurement of naturalization. And *second*, the Sixth Circuit misconstrued Section 1015(a), one of the predicate offenses at issue here, by holding that it does not require proof of a material false statement. As explained below, each of these errors warrants reversal of the judgment.

A. The Sixth Circuit Misconstrued Section 1425(a) By Upholding A Conviction Where The Government Failed To Prove A Causal Link Between The Predicate Violation And The Procurement Of Naturalization.

1. The Text Of Section 1425(a) Requires A Causal Link Between The Predicate Violation And The Procurement Of Naturalization.

This is a straightforward textual case. Section 1425(a) makes it a crime to "knowingly procure[] or attempt[] to procure" naturalization "contrary to law." 18 U.S.C. § 1425(a).[3] Construing that language, the Sixth Circuit held that the Government could establish a violation of Section 1425(a) simply by proving that, with the requisite knowledge, a defendant (1) procured naturalization, and (2) violated the law. *See* Pet. App. 14-30a. By thus treating Section 1425(a)'s requirements as independent rather than causally linked, the court excused the Government from having to prove that the defendant procured naturalization *as a result* of a violation of law.

That is, to say the least, an unnatural way to read the text. As a matter of ordinary English, to "procure" is "to obtain or get by care, effort, or the use of special means." *Random House Dictionary of the English Language* 1543 (2d ed. 1987); *see also*

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[3] Section 1451(e), which cross-references Section 1425(a), paraphrases somewhat by referring to "knowingly procuring naturalization in violation of law." 8 U.S.C. § 1451(e).

Webster's Ninth New Collegiate Dictionary 938 (1988) (defining "procure" as "to get possession of: obtain by particular care and effort"); Bryan A. Garner, *A Dictionary of Modern Legal Usage* 698 (2d ed. 1995) (defining "procure" as "a formal word for *get* (the ordinary word) or *obtain* (a semiformal word)."). And the words "contrary to law," set off by commas, make up an adverbial phrase modifying the verb phrase "procures or attempts to procure." Thus, Section 1425(a) does not simply proscribe any procurement of naturalization; rather, it proscribes procurement in a particular way—"contrary to law." In other words, the procurement of naturalization and the underlying violation of law must be causally linked. It would be odd indeed to say that a person procures (or attempts to procure) something contrary to law if the violation, in fact, has no effect on the procurement. Rather, the violation of law must have been the means of procurement.

The Sixth Circuit's interpretation of Section 1425(a) divorces the adverbial phrase ("contrary to law") from its object ("procures or attempts to procure"). Under that interpretation, the procurement (or attempted procurement) could be entirely lawful and untainted by the defendant's violation of law, but still lead to a conviction. As a result, naturalized citizenship could be revoked even if there were nothing untoward about the naturalization, and even if the predicate crime were trivial. That is simply not a plausible interpretation of the statute; to the contrary, the predicate violation of law must at least be a contributory cause of the naturalization (or, put differently, the naturalization itself must be tainted by the underlying illegality).

That commonsense point is confirmed by other provisions of the federal criminal code involving procurement. These provisions likewise involve some wrongdoing to procure some action, and logically entail a causal link between the wrongdoing and the action. *See, e.g.*, 18 U.S.C. § 214 ("Whoever stipulates for or gives or receives ... any fee, commission, bonus, or thing of value for procuring or endeavoring to procure from any Federal Reserve bank any advance, loan, or extension of credit ... [without formal disclosure] ... shall be [punished]."); 18 U.S.C. § 2235 ("Whoever maliciously and without probable cause procures a search warrant to be issued and executed, shall be [punished]."). Without a causal link, one cannot sensibly say that the defendant unlawfully "procured" a loan under Section 214 or a search warrant under Section 2235.

That reading also properly aligns Section 1425(a) with its civil counterpart, 8 U.S.C. § 1451(a). In pertinent part, the latter statute provides for the denaturalization of citizens whose naturalization was "procured by concealment of a material fact or by willful misrepresentation." 8 U.S.C. § 1451(a). Giving that language its ordinary meaning, this Court has held that, at a minimum, "the naturalized citizen must have procured citizenship *as a result* of the misrepresentation or concealment." *Kungys*, 485 U.S. at 767 (emphasis added). That same basic point applies here: when Congress made it a crime to procure, or attempt to procure, naturalization "contrary to law," it required a causal link between

the procurement of naturalization and the predicate violation of law.[4]

Because the offense charged here involves alleged false statements, Mrs. Maslenjak tried to address the need for a causal link by arguing that the relevant statements must, at a minimum, be material to "procure" naturalization under Section 1425(a), as several courts of appeals have held. *See, e.g.*, *Munyenyezi*, 781 F.3d at 536; *Latchin*, 554 F.3d at 712-15; *United States v. Alferahin*, 433 F.3d 1148, 1154-56 (9th Cir. 2006); *Puerta*, 982 F.2d at 1301-02. Although the indictment in this case charged Mrs. Maslenjak with making "material false statements" in her naturalization application, Pet. App. 41a, the Government nevertheless vigorously—and

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[4] To be sure, *Kungys*—which has been described as "maddeningly fractured" decision, *Latchin*, 554 F.3d at 713—failed to produce a majority opinion on the precise nature of that causal link. As noted in the text, however, the critical point for present purposes is that all of the participating Justices agreed that "procurement" requires *some* causal link. *See* 485 U.S. at 767; *see also id.* at 777 ("[T]he 'procured by' language can and should be given *some* effect beyond the mere requirement that the misrepresentation have been made in the application proceeding.") (Scalia, J., joined by Rehnquist, C.J., and Brennan, J.; emphasis added); *id.* at 787-88 (Stevens, J., joined by Marshall and Blackmun, JJ., concurring in the judgment) (agreeing with the Court that the "procurement" requirement establishes "a causal connection between the misrepresentation and the award of citizenship," but advocating an even more demanding causal link); *id.* at 801 (O'Connor, J., concurring in part and dissenting in part) (joining Part II.A of the Court's opinion); *id.* at 803 (White, J., dissenting) (same). Because the jury in this case was allowed to convict on the basis of *no causal link at all*, this Court need not determine the precise nature of the requisite causal link to resolve this case.

successfully—opposed Mrs. Maslenjak's request for a materiality instruction. *See, e.g.*, Pet. App. 81a. And the Sixth Circuit affirmed the conviction by "hold[ing] that the district court's instruction on the 'contrary to law' element was a correct statement of the law," Pet. App. 15a—*i.e.*, that it suffices for the Government to prove that the defendant "acted in violation of at least one law governing naturalization," Pet. App. 85a, as opposed to proving that the violation procured the naturalization decision.

Neither the Government nor the Sixth Circuit ever explained, however, how an immaterial false statement could "procure" naturalization. As a general matter, a material false statement is one that "has a natural tendency to influence, or was capable of influencing, the decision of the decisionmaking body to which it was addressed." *Kungys*, 485 U.S. at 770 (internal quotation omitted). If a statement does not even meet that standard, by definition it cannot "procure" naturalization. Indeed, as noted above, one of the few points on which all of the Justices agreed in *Kungys* is that procurement involves something *more* than the mere existence of a material false statement. *See* 485 U.S. at 767; *see also id.* at 776-77 (plurality opinion of Scalia, J., joined by Rehnquist, C.J., and Brennan, J.); *id.* at 787-88 (Stevens, J., joined by Marshall and Blackmun, JJ., concurring in the judgment); *id.* at 801 (O'Connor, J., concurring in part and dissenting in part); *id.* at 803 (White, J., dissenting).

The Sixth Circuit thus missed the point by insisting that Section 1425(a) does not contain the word "material." *See* Pet. App. 8a, 18a. The statute

does contain the word "procure[]," and a person cannot "procure" citizenship "contrary to law" based on an immaterial false statement. Indeed, the fact that the statute does not contain the word "material" is particularly unilluminating in this context. By its terms, Section 1425(a) applies to *any* actions "contrary to law" that procure naturalization, not just false statements that do so. Given the provision's scope, it would be incongruous for Congress to include a word like "material," which would apply only in the subset of cases involving statements and not in cases involving a non-statement predicate offense (such as bribery of an immigration official in violation of 18 U.S.C. § 201(b)(1)). *Cf.* 8 U.S.C. § 1451(a) (using the word "material" to modify *only* misrepresentation and concealment offenses, not other offenses that may "illegally procure[]" citizenship). The Sixth Circuit thus erred by affirming Mrs. Maslenjak's conviction under § 1425(a), and her subsequent loss of citizenship under 8 U.S.C. § 1451(e), where the Government was never required to prove that her alleged false statements were even material.

2. Background Rules Of Statutory Interpretation Support A Causal Link Between The Predicate Violation And The Procurement Of Naturalization.

The gravity of denaturalization underscores the need for a causal link between an underlying violation of law and a naturalization decision. Over the years, this Court has exhausted superlatives in describing the value of American citizenship—"a most precious right," *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 159 (1963), a "priceless treasure,"

Fedorenko, 449 U.S. at 507 (internal quotation omitted), and "the highest hope of civilized men," *Schneiderman*, 320 U.S. at 122. Citizenship, after all, is "membership in a political society," and the foundation of all other civil rights. *Luria v. United States*, 231 U.S. 9, 22 (1913). Thus, "[t]o take away a man's citizenship deprives him of a right no less precious than life or liberty, indeed of one which today comprehends those rights and almost all others." *Klapprott v. United States*, 335 U.S. 601, 616 (1949) (Rutledge, J., concurring in judgment); *see also Knauer*, 328 U.S. at 659 ("[D]enaturalization ... may result in the loss of all that makes life worth living.") (internal quotation omitted); *cf.* Edward Everett Hale, *The Man Without a Country*, Atlantic Monthly, Dec. 1863, at 665-80. Because the draconian consequence of denaturalization flows automatically from conviction under Section 1425(a), *see* 8 U.S.C. § 1451(e), this Court should not lightly assume that Congress intended to allow the Government to procure such a conviction based on an immaterial false statement.

Indeed, it is anomalous to suppose that Congress intended to authorize denaturalization in a criminal proceeding but not a civil proceeding *based on the very same statement*. Yet that is the upshot of the decision below. As noted above, a misrepresentation or concealment must be "material" to warrant denaturalization in a civil proceeding. 8 U.S.C. § 1451(a); *see generally Kungys*, 485 U.S. at 767. There is no reason to suppose that Congress would have intended to authorize denaturalization in a criminal proceeding—which can, in addition, lead to imprisonment for up to 25 years—based on a *less* demanding substantive standard. Indeed, the

Government itself has conceded in many cases in many courts over many years that the materiality requirement of Section 1451(a) also applies to Section 1425(a). *See, e.g.*, *United States v. Shordja*, 598 F. App'x 351, 354 (6th Cir. 2015) ("[T]he Government concedes that [§ 1425(a)] contains a materiality element."); *Latchin*, 554 F.3d at 712 ("Both sides agree that a false statement has to be 'material' to sustain a conviction."); *Puerta*, 982 F.2d at 1301 ("[T]he government agrees with [the defendant] that § 1425(a) implies a materiality requirement similar to the one used in the denaturalization context.").

The Sixth Circuit attempted to rationalize that anomaly by asserting that defendants in criminal cases enjoy enhanced *procedural* protections. *See* Pet. App. 27-29a. But that assertion is a *non sequitur*. Criminal proceedings involve greater procedural protections than civil proceedings because they generally entail a more serious threat to life, liberty, or property. *See, e.g.*, *In re Winship*, 397 U.S. 358, 363-64 (1970). It hardly follows that Congress deliberately tries to offset those protections by watering down the substantive elements of the criminal law to make convictions easier to obtain. The Sixth Circuit's efforts to reconcile the criminal and civil denaturalization provisions fail to satisfy the judicial obligation "to make sense rather than nonsense out of the *corpus juris*." *West Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 101 (1991).

The more extensive procedural protections of the criminal law thus do not justify interpreting the substantive proscriptions of the criminal law less rigorously than their civil-law counterparts. Indeed,

that approach turns the law upside down—the venerable rule of lenity requires that ambiguity in criminal provisions be construed in favor of the accused, and thus, if anything, more narrowly than their civil-law counterparts. *See, e.g.*, *Liparota v. United States*, 471 U.S. 419, 427 (1985). As Judge Gibbons noted in her concurring opinion below, she could not locate "any analogous context in which the elements of a crime are less onerous than the elements of the related civil penalty proceeding." Pet. App. 39a.

And lenity is particularly appropriate in the denaturalization context. As this Court has long recognized, the consequences of denaturalization are "more serious than a taking of one's property, or the imposition of a fine or other penalty." *Schneiderman*, 320 U.S. at 122; *see also Klapprott*, 335 U.S. at 611 (plurality opinion) ("Denaturalization consequences may be more grave than consequences that flow from conviction for crimes."). Thus, this Court has long insisted that, in a denaturalization proceeding, "the facts and the law should be construed as far as is reasonably possible in favor of the citizen." *Schneiderman*, 320 U.S. at 122. That rule effectively extends the rule of lenity to *civil* denaturalization proceedings, where the Government must carry its burden of proof by "'clear, unequivocal, and convincing evidence which does not leave the issue in doubt.'" *Kungys*, 485 U.S. at 781 (quoting *Schneiderman*, 320 U.S. at 158). It follows *a fortiori* that the defendant in a *criminal* denaturalization proceeding like this one should get the benefit of any doubt on the law and the facts.

Finally, the canon of constitutional avoidance also counsels in favor of construing Section 1425(a) to require, in cases based on alleged false statements, that the statements at the very least be material. As a general rule, the law knows no difference between classes of citizens—a naturalized citizen is every bit as much of an American as one whose forebears arrived on the *Mayflower*. *See, e.g.*, *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738, 827 (1824) ("A naturalized citizen ... becomes a member of the society, possessing all the rights of a native citizen, and standing, in the view of the constitution, on the footing of a native."). That general rule prevents naturalized Americans from being "second-class" citizens, and is thus subject to only a few "strict" exceptions, *Knauer*, 328 U.S. at 658 & n.3—eligibility for certain specific political offices, *see* U.S. Const. art. I, § 2, cl. 2; *id.* art. I, § 3, cl. 3; *id.* art. II, § 1, cl. 5, and the threat of denaturalization. Whereas a natural-born American can *never* be stripped of her citizenship, a naturalized American can be—but if, and only if, she "unlawfully procured" her citizenship in the first instance. *Afroyim*, 387 U.S. at 267 n.23. Beyond this one exception, Congress lacks the constitutional power to strip away American citizenship. *See id.* at 256-67.

That constitutional limitation has important implications for the interpretation of Section 1425(a). Given that Congress has no constitutional power to strip a naturalized American of citizenship except where that citizenship was "unlawfully procured," the unlawful procurement statute must be strictly construed to fit within that limited constitutional power. Here, as noted above, the Sixth Circuit essentially read the unlawful procurement

requirement out of the unlawful procurement statute, and thereby cut Section 1425(a) loose from its constitutional moorings. Thus, to preserve the provision's constitutionality, this Court should give the procurement element its ordinary meaning, and require the Government to prove that that the naturalized citizen would not have obtained American citizenship but for a predicate violation of law. At a minimum, where—as here—a denaturalization proceeding is based on a false statement, the Government must prove that the statement was material. Construing Section 1425(a) to allow the Government to strip a naturalized American of her citizenship based on an immaterial false statement would give rise to very serious constitutional questions, and thus is not a proper construction. *See, e.g.*, *Skilling v. United States*, 561 U.S. 358, 403 (2010); *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988); *Crowell v. Benson*, 285 U.S. 22, 62 (1932).

B. The Sixth Circuit Misconstrued Section 1015(a) By Holding That It Does Not Require Proof Of A Material False Statement.

An alternative path to the same result is to interpret 18 U.S.C. § 1015(a)—one of the two predicate offenses alleged here for the Section 1425(a) charge—to require proof of a material false statement. The jury returned a general verdict that did not specify whether Mrs. Maslenjak's conviction on Count 1 was based on the Section 1015(a) or the Section 1427(a)(3) predicate offense (or both). *See* Pet. App. 91-92a. Accordingly, it follows that her

conviction is legally invalid if *either* of the alternative theories of guilt is legally invalid. *See, e.g., Skilling*, 561 U.S. at 414; *Hedgpeth v. Pulido*, 555 U.S. 57, 58 (2008) (*per curiam*); *Yates v. United States*, 354 U.S. 298, 312 (1957). If Section 1015(a) requires proof of a material false statement, then Mrs. Maslenjak's conviction under Section 1425(a) and subsequent denaturalization under Section 1451(e) cannot stand.

Section 1015(a) provides, in pertinent part, that "[w]hoever knowingly makes any false statement under oath in any case, proceeding, or matter relating to ... naturalization ... shall be fined under this title or imprisoned not more than five years, or both." 18 U.S.C. § 1015(a). Although the defense argued at trial that the Government had to prove that any false statement was material, Pet. App. 76-77a, 79-80a, the district court concluded otherwise, and instructed the jury that "[a] false statement contained in an immigration or naturalization document *does not have to be material* in order for the defendant to have violated the law in this case." Pet. App. 86a (emphasis added). And the Sixth Circuit upheld that instruction, squarely holding that "§ 1015(a) does not require proof of a false statement of material fact." Pet. App. 19a.

The Sixth Circuit did not undertake any independent analysis of Section 1015(a). Rather, it based its holding on one of its own prior (unpublished) decisions, as well as two decisions from other Circuits. *See* Pet. App. 18-19a, 24a (citing *United States v. Tongo*, 16 F.3d 1223, 1994 WL 33967, at *3-4 (6th Cir. 1994) (*per curiam*); *United States v. Youssef*, 547 F.3d 1090, 1094 (9th Cir. 2008) (*per curiam*); and *United States v. Abuagla*, 336 F.3d

277, 278 (4th Cir. 2003)). These decisions, in turn, effectively began and ended their analysis by pointing out that Section 1015(a) does not contain the word "material."

But that simplistic approach ignores the judicial responsibility to consider—in addition to the words of a criminal statute—"the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept." *Wisconsin Dep't of Revenue v. William Wrigley, Jr., Co.*, 505 U.S. 214, 231 (1992); *see also Neder*, 527 U.S. at 21. To read a criminal statute without reference to such background principles would have the effect of extending the prohibitions to conduct never thought worthy of criminal punishment—like reading a murder statute without the background principle of self-defense or statutes about threats or conversion of government property without the background principle of intent. *See, e.g., Elonis v. United States*, 135 S. Ct. 2001, 2009-10 (2015); *Morissette v. United States*, 342 U.S. 246, 250-63 (1952).

One such background principle is "the venerable maxim *de minimis non curat lex* ('the law cares not for trifles')." *William Wrigley*, 505 U.S. at 231; *see also Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 618 (1992); *Hudson v. McMillian*, 503 U.S. 1, 8-9 (1992); *Ingraham v. Wright*, 430 U.S. 651, 674 (1977); *Abbott Laboratories v. Portland Retail Druggists Ass'n*, 425 U.S. 1, 18 (1976); *Industrial Ass'n of S.F. v. United States*, 268 U.S. 64, 84 (1925). Centuries ago, with reference to perjury, Sir William Blackstone wrote that "if [the false statement] only be in some trifling collateral circumstance, to which

no regard is paid, it is not penal." 4 William Blackstone, *Commentaries* *137; *see also* 3 Edward Coke, *Institutes* 164 (6th ed. 1680) (describing perjury as a crime committed by one who "sweareth absolutely, and falsely in a matter material to the issue.").

Our laws are written with this background principle in mind. As a general rule, it is unlikely that Congress intends legal proscriptions (especially criminal proscriptions) to apply to immaterial false statements—*i.e.*, statements that by definition have no tendency or capability to influence an official decision. Thus, the absence of the word "material" does not invariably mean that Congress intends a statute to apply to immaterial statements. *See, e.g.*, *Neder*, 527 U.S. at 21-23.

To be sure, the *de minimis non curat lex* background presumption is not absolute: it can be overcome by statutory language that in essence supplies the constraints that a materiality requirement would otherwise provide. That was the case in *Wells*, on which the decisions cited by the court below relied in interpreting Section 1015(a). *Wells* involved a provision of the criminal code, 18 U.S.C. § 1014, which—like Section 1015—does not contain an express materiality requirement. In declining to read such a requirement into that provision, the *Wells* Court duly noted that fact. *See* 519 U.S. at 490.[5] But the Court did not end its

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[5] The Court noted that some prior statutes incorporated into Section 1014 had contained a materiality requirement that was subsequently omitted in 1948. *See Wells*, 519 U.S. at 493. Prior versions of Section 1015(a) similarly contained a

analysis there. To the contrary, the Court went on to determine whether its reading of Section 1014 would have the unintended consequence of "'ma[king] a surprisingly broad range of unremarkable conduct a violation of federal law.'" 519 U.S. at 498 (quoting *Williams v. United States*, 458 U.S. 279, 286-87 n.8 (1982)). The Court thus addressed whether a literal reading of Section 1014 would lead to sweeping applications that Congress, despite its use of broad language, is unlikely to have intended.

To that end, the *Wells* Court considered the text of Section 1014 as a whole, looking to see whether it contained any other requirement, akin to a materiality requirement, that might cabin the provision's potentially open-ended reach. And it found just such a requirement: Section 1014 specifies that the defendant must have made a false statement "'for the purpose of influencing' a bank." 519 U.S. at 499 (quoting 18 U.S.C. § 1014). That requirement was substantially similar to a requirement that the Court had previously found important in construing 8 U.S.C. § 1101(f)(6)—another statute lacking an express materiality requirement—that a person have given false testimony "with the subjective intent of obtaining immigration benefits." *Kungys*, 485 U.S. at 780; *see also United States v. Kay*, 303 U.S. 1, n.1 (1938) (construing provision of the Home Loan Act applicable to false statements "for the purpose of

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materiality requirement, which was dropped in 1909. *See United States v. Abuagla*, 215 F. Supp. 2d 684, 685 (E.D. Va. 2002), *aff'd*, 336 F.3d 277, 278 (4th Cir. 2003).

influencing in any way the action [of specified agencies and officials]").

Following the path set in *Kungys*, the *Wells* Court observed: "A statement made 'for the purpose of influencing' a bank will not usually be about something a banker would regard as trivial, and 'it will be relatively rare that the Government will be able to prove that' a false statement 'was ... made with the subjective intent' of influencing a decision unless it could first prove that the statement has 'the natural tendency to influence the decision.'" *Wells*, 519 U.S. at 499 (quoting *Kungys*, 485 U.S. at 780-81). As a result, the *Wells* Court saw no need to imply materiality as an element of Section 1014, pointing out that "the literal reading of the statute will not normally take the scope of § 1014 beyond the limit that a materiality requirement would impose." 519 U.S. at 499.

If the Sixth Circuit had undertaken a similarly close textual examination in this case, it would have perceived that Section 1015(a) is a very different statute. Nothing in that provision demands that a false statement be made for the purpose of influencing an immigration official or obtaining an immigration benefit. Thus, insofar as such a purpose requirement can act as a proxy for a materiality requirement, and thereby "avoid the improbability that Congress intended to impose substantial criminal penalties on relatively trivial or innocent conduct," *Wells*, 519 U.S. at 498, those protections are absent here. While it would be "relatively rare" for a prosecution under Sections 1101(f)(6) or 1014 to be grounded in immaterial false statements, the Sixth Circuit's reading of Section 1015(a) means that

prosecutors will have such an option in *every* case in which they can identify a false statement, no matter how trivial or harmless, in a naturalization proceeding. That is a textbook example of making "a surprisingly broad range of unremarkable conduct a violation of federal law." *Wells*, 519 U.S. at 498 (internal quotation omitted).

Nor does Section 1015(a) contain other language that might forestall such prosecutorial overreaching. Although the statute does require that false statements be made "knowingly," that language only protects against prosecutions for inadvertent falsehoods, not trivial ones. And the language in Section 1015(a) requiring false statements to be made "under oath" does little to narrow its reach: virtually all statements made in naturalization proceedings, no matter how insignificant, are sworn under oath. *See, e.g.*, Pet. App. 74a.

The fundamental question, then, is whether the absence of the word "material" in Section 1015(a) is, by itself, enough to justify a sweeping reading of that provision. It is not. Although Congress certainly could have specified that false statements under Section 1015(a) must be material, as it has done in other statutes, the fact is that federal "false statement" statutes are anything but a testament to precise drafting. As both the majority and dissenting opinions in *Wells* recognized, there are more than one hundred federal statutes that penalize the making of false statements, many of which have an express requirement of materiality and many of which do not. *See Wells*, 519 U.S. at 493 n.14; *id.* at 505-06 & nn.9-10 (Stevens, J., dissenting). Nothing in the history of these wide-ranging provisions—

which have undergone a variety of revisions and recodifications over time—suggests that Congress was following a strict template under which it deliberately omitted the word "material" to send a signal that materiality was irrelevant.

The notion that Congress had any such intention in Section 1015(a) is even more far-fetched given the Government's inability to explain why Congress would want to punish (with criminal fines and imprisonment for up to five years) conduct that has no tendency to affect official decisionmaking. Indeed, the natural assumption would be just the opposite: that Congress meant to reserve such heavy punishments for statements of consequence. And, if the meaning of a particular criminal statute is open to serious question, as it is here, the rule of lenity properly assures that persons are not imprisoned for actions that Congress did not intend to make criminal in the first place. *See, e.g., United States v. Lanier*, 520 U.S. 259, 266 (1997); *United States v. Bass*, 404 U.S. 336, 348 (1971).

In short, there is no good reason to construe Section 1015(a) to apply to immaterial false statements, and ample reason not to do so. Because the jury in this case was incorrectly instructed on this score, Mrs. Maslenjak is entitled to a new trial on this ground as well.[6]

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[6] In its brief in opposition to the petition, the Government argued harmless error, on the theory that Mrs. Maslenjak's false statement actually was material. *See* Pet. Opp. 18. But the Government made a deliberate decision, over Mrs. Maslenjak's objection, to urge the district court to keep the materiality issue away from the jury. *See* Pet. App. 81a ("The

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment.

February 27, 2017

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United States believes that we could easily prove that the statement was material, but we don't think that we have to under the law."). Thus, at the Government's urging, the district court specifically instructed the jury that it need *not* find Mrs. Maslenjak's statement material to convict. *See* Pet. App. 86a. If materiality is indeed an element of the crime, then a properly instructed jury should determine whether the Government proved that element beyond a reasonable doubt. *See, e.g.*, *United States v. Gaudin*, 515 U.S. 506, 509-23 (1995). Although this Court has held that instructions omitting an element of the offense are amenable to harmless-error analysis, *see, e.g.*, *Neder v. United States*, 527 U.S. 1, 8-15 (1999), this Court need not and should not undertake such a fact-intensive analysis in the first instance. *See, e.g.*, *Skilling*, 561 U.S. at 414 (remanding for harmless-error review).

RECORD AND BRIEFS

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No. 16-309

In the Supreme Court of the United States

DIVNA MASLENJAK, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Section 1425(a) of Title 18 of the United States Code provides that a person who "knowingly procures or attempts to procure, contrary to law, the naturalization of any person" commits a criminal offense. Upon conviction, Section 1451(e) of Title 8 of the United States Code requires revocation of that person's certificate of naturalization.

The question presented is whether a conviction under Section 1425(a) for knowingly procuring naturalization contrary to law, based on false statements made under oath in the defendant's application for naturalization and in sworn testimony during her naturalization proceedings, requires proof that the false statements were material.

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OPINION BELOW

The decision of the court of appeals (Pet. App. 1a-39a) is reported at 821 F.3d 675.

JURISDICTION

The judgment of the court of appeals was entered on April 7, 2016. A petition for rehearing was denied on May 27, 2016 (Pet. App. 40a). On August 3, 2016, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including September 26, 2016. The petition for a writ of certiorari was filed on September 8, 2016. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions are reprinted in an appendix to this brief. App., *infra*, 1a-8a.

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Ohio, petitioner was convicted of knowingly procuring naturalization contrary to law, in violation of 18 U.S.C. 1425(a); and knowingly using an unlawfully issued certificate of naturalization, in violation of 18 U.S.C. 1423. Pet. App. 2a. The district court sentenced petitioner to two years of probation and revoked her naturalization pursuant to 8 U.S.C. 1451(e). Pet. App. 6a. The court of appeals affirmed. *Id.* at 1a-39a.

1. a. Petitioner is an ethnic Serb and a native of what is today the nation of Bosnia and Herzegovina (Bosnia), formerly part of Yugoslavia. Pet. App. 3a. In the 1990s, as Yugoslavia disintegrated, Bosnia descended into a civil war between rival ethnic groups, including Bosnian Serbs and Bosnian Muslims. *Ibid.*; see, *e.g.*, 4/15/14 Tr. (Tr.) 70-77. With the exception of a brief sojourn to the Serbian city of Belgrade in 1992, petitioner remained in Bosnia throughout the war. Pet. App. 3a.

In April 1998, petitioner and her family met with an American immigration official in Belgrade to seek refugee status based on their supposed fear of persecution in Bosnia. Pet. App. 3a. Petitioner was the primary applicant on her family's application. *Id.* at 3a-4a. She stated under oath that her family feared persecution based on their Serbian ethnicity and because her husband, Ratko Maslenjak, refused to serve in the Bosnian Serb military during the civil war. *Id.* at 4a,

56a-60a. Petitioner swore that when she returned to Bosnia in 1992, her husband had remained in Serbia to avoid conscription. *Id.* at 4a, 58a-60a. Petitioner claimed that, as a result, she and her husband had lived apart from 1992 to 1997. *Id.* at 57a.

Based on those representations, petitioner and her family, including her husband, were granted refugee status and immigrated to the United States in 2000. Pet. App. 4a. In 2004, petitioner and her husband became lawful permanent residents of the United States. *Ibid.*; see, *e.g.*, J.A. 66, 70; Tr. 259.

b. Petitioner's story was false. In 2006, immigration officials confronted Ratko Maslenjak with military records establishing that he had been an officer in the Bratunac Brigade of the Army of the Republic Srpska, also known as the Bosnian Serb Army or VRS. Pet. App. 4a. Ratko's service coincided with the Bratunac Brigade's participation in the July 1995 genocide of 8000 Bosnian Muslim civilians in and around the town of Srebrenica. *Ibid.*; see Tr. 79-81, 83-87, 128-132.[1] Although the records did not directly implicate Ratko in war crimes, see Pet. App. 4a-5a, they contained significant evidence of his involvement, including that he was serving as a company commander in the Bratunac Brigade on the days of the massacre and that he was promoted to a higher rank two months later, see Tr. 124-125, 128, 131. The documents also indicated that Ratko was on active duty with the Bosnian Serb Army during the period when

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[1] The Srebrenica genocide is widely considered to be "Europe's worst massacre of civilians since World War II." Message on the Observance of the 10th Anniversary of the Massacre in Srebrenica, 2 Pub. Papers 1207 (July 11, 2005).

petitioner claimed that Ratko was hiding in Serbia to avoid conscription. Tr. 132.

Petitioner was present in 2006 when immigration officers interviewed Ratko about his prior military service. Pet. App. 4a. Soon after, Ratko was arrested and was charged with two counts of making a false statement on a government document. *Id.* at 4a-5a.

c. One week after Ratko's arrest for lying about his service in the Bratunac Brigade, petitioner filed an N-400 Application for Naturalization. Pet. App. 4a-5a, 65a-74a. One of the questions on the application asked whether petitioner had ever "given false or misleading information to any U.S. government official while applying for any immigration benefit or to prevent deportation, exclusion or removal." *Id.* at 72a (question 23). Another question asked whether petitioner had ever "lied to any U.S. government official to gain entry or admission into the United States." *Ibid.* (question 24). Petitioner falsely answered "no" to both questions but swore under oath that her answers were true. *Id.* at 72a, 74a. Petitioner was also interviewed under oath about her eligibility for naturalization and affirmed that her written answers were true and correct. *Id.* at 5a; see J.A. 94, 98-99. In August 2007, petitioner was naturalized as a United States citizen. Pet. App. 5a.

d. In October 2007, Ratko was convicted of making false statements on a government document, rendering him subject to removal from the United States. Pet. App. 5a. Petitioner then filed a Form I-130 Petition for Alien Relative seeking to classify Ratko as the spouse of a U.S. citizen, which would allow Ratko to seek lawful permanent resident status as relief from his removal proceedings. J.A. 104-105.

Ratko also filed an application for asylum. Pet. App. 5a. During petitioner's testimony at Ratko's asylum hearing, she admitted that she and Ratko had in fact lived together in Bosnia after 1992 and that she lied during her 1998 refugee application interview in Belgrade. *Id.* at 5a-6a; see J.A. 87-89.

2. A federal grand jury charged petitioner with one count of "knowingly procur[ing], contrary to law, her naturalization," in violation of 18 U.S.C. 1425(a). Indictment 1-2. The indictment alleged that petitioner "made material false statements" by answering "no" to questions 23 and 24 on her Application for Naturalization and by "answering the same" during her naturalization interview, even though she "then well knew that she had lied to government officials when applying for her refugee status and her lawful permanent resident status and thereby gained admission into the United States." *Ibid.* The grand jury also charged petitioner with knowingly misusing evidence of naturalization, in violation of 18 U.S.C. 1423, in connection with her attempt to avoid Ratko's removal by filing a Petition for Alien Relative on his behalf. Indictment 2.

3. The government contended at trial that petitioner committed an offense under Section 1425(a) by violating two federal laws in the course of procuring her naturalization: (1) 18 U.S.C. 1015(a), which prohibits knowingly making a false statement under oath in a naturalization proceeding; and (2) 8 U.S.C. 1427(a)(3), which prohibits the naturalization of a candidate who lacks "good moral character," *ibid.*, including a person "who has given false testimony for the purpose of obtaining" an immigration benefit, 8 U.S.C. 1101(f)(6). See Pet. App. 9a.

The district court instructed the jury that, "[i]n order to prove that [petitioner] acted 'contrary to law'" for purposes of Section 1425(a), "the government must prove that [petitioner] acted in violation of at least one law governing naturalization." Pet. App. 85a. The court explained that two such laws were at issue in this case—18 U.S.C. 1015(a) and 8 U.S.C. 1427(a)(3)—and that the jury could convict petitioner of a Section 1425(a) offense if it found that she acted contrary to either of those statutes. See Pet. App. 85a-86a. The court instructed the jury that a naturalization applicant violates Section 1015(a) if she "knowingly mak[es] any false statement under oath, relating to naturalization." *Id.* at 85a. Alternatively, the court stated that Section 1427(a)(3) "requires an applicant to demonstrate that 'she has been and still is a person of good moral character,'" and that "[g]iving false testimony for the purpose of obtaining any immigration benefit precludes someone from being regarded as having good moral character." *Id.* at 86a; see *ibid.* (explaining that "[i]f an applicant does not possess good moral character, the applicant is not entitled to naturalization"). The court further instructed the jury, over petitioner's objection, that a "false statement contained in an immigration or naturalization document does not have to be material in order for [petitioner] to have violated the law in this case." *Ibid.*; see *id.* at 82a (overruling petitioner's objection).

The jury convicted petitioner on both counts. Pet. App. 91a-94a. Under 8 U.S.C. 1451(e), petitioner's conviction for violating 18 U.S.C. 1425(a) resulted in mandatory revocation of her citizenship. Pet. App. 6a, 95a-96a.

4. The court of appeals affirmed. Pet. App. 1a-38a. Petitioner argued that materiality is an element of Section 1425(a) and that the district court erred in instructing the jury otherwise. Pet. C.A. Br. 15-19. The court rejected that argument.

First, the court of appeals observed that "the term 'material' is found nowhere in [Section] 1425(a)," and thus "[a] plain reading of the statute" indicates that materiality is not an element of the offense. Pet. App. 8a. The court explained that "[r]eading an implied element of materiality into" Section 1425(a) would be "inconsistent with other laws criminalizing false statements in immigration proceedings and regulating the naturalization process." *Id.* at 9a. The court observed that neither of the predicate violations of law supporting petitioner's Section 1425(a) conviction requires proof of materiality, and thus it would be "incongruous" to require such proof to establish that petitioner acted "contrary to" those laws in procuring her naturalization. *Id.* at 19a.

Second, the court of appeals explained that the lack of a materiality requirement under Section 1425(a) is consistent with Congress's provision for "a two-track system for denaturalization," one civil and the other criminal. Pet. App. 10a. The court noted that Congress has authorized denaturalization in a civil proceeding if (*inter alia*) the government establishes by clear, unequivocal, and convincing evidence that an alien procured naturalization by concealing or willfully misrepresenting a "material fact." *Ibid.* (quoting 8 U.S.C. 1451(a)). Congress imposed no similar materiality requirement for a criminal conviction pursuant to Section 1425(a), which results in mandatory denaturalization under 8 U.S.C. 1451(e). See Pet.

App. 10a. Instead, the court explained, the government must meet the exacting procedural and constitutional requirements of a criminal prosecution to proceed under that "track," including proving a predicate violation of law and other elements of the offense beyond a reasonable doubt. *Id.* at 10a, 12a-13a.

The court of appeals recognized that other courts of appeals had interpreted Section 1425(a) to contain an implied element of materiality, but it found those decisions "unpersuasive." Pet. App. 22a. The court explained that the leading case, *United States* v. *Puerta*, 982 F.2d 1297 (9th Cir. 1992), interpreted the phrase "contrary to law" in Section 1425(a) in a manner that "ignores the fact that other violations of federal law pertaining to false statements in immigration proceedings do not require proof of materiality." Pet. App. 24a. The court noted that other courts of appeals had followed *Puerta* "without engaging in their own analysis of the statutory language," *id.* at 23a, or had merely assumed that materiality was required based on the parties' agreement, *id.* at 22a.

Judge Gibbons filed a concurring opinion expressing her "uncertain[ty]" as to "what goal Congress intended to further by omitting materiality from the elements of [Section] 1425(a)." Pet. App. 39a. Nonetheless, she joined the court's opinion because "the view most faithful to the statute is that materiality is not an element of the [Section] 1425(a) offense." *Ibid.*

SUMMARY OF ARGUMENT

The government was not required to prove that petitioner's false statements were material in order to obtain a conviction under Section 1425(a).

I. A. Section 1425(a) of Title 18 of the United States Code is an umbrella statute that imposes crim-

inal penalties on individuals who procure naturalization in a manner "contrary to" other laws. Some of those laws require proof that the defendant made a material false statement. When a defendant is alleged to have acted "contrary to" such a law for purposes of Section 1425(a), the government must prove materiality to establish the predicate violation. But other predicate violations—including the ones in this case—do not require a material false statement. And still others (like bribery, identity theft, or committing other disqualifying crimes) involve conduct that cannot reasonably be analyzed for "materiality" at all.

No justification exists for inserting an element of materiality in Section 1425(a). That term does not appear in the statute, nor does it appear in 8 U.S.C. 1451(e), which mandates denaturalization upon a conviction under Section 1425(a). Implying such an element would effectively preclude the consistent application of Section 1425(a) to all potential predicate violations of law. The better interpretation, and the one most faithful to the text, is that a person violates Section 1425(a) if she procures naturalization in a manner that violates another provision of law that governs the naturalization process, defined according to the elements of the precise violation at issue.

B. The statutory phrase "procures * * * contrary to law" does not imply a materiality requirement. 18 U.S.C. 1425(a). An individual need only procure her naturalization in a manner that violates the law; the statute does not say (as petitioner does, Br. 3) that the violation of law must itself "procure[]" or "caus[e]" the naturalization. That interpretation is inconsistent with numerous decisions of this Court interpreting the term "procured" in the naturalization context, which

make clear that an individual "procures" her naturalization unlawfully if she violates the rules Congress has set forth for obtaining naturalization—even if she would have obtained naturalization without violating the law.

C. The history and evolution of Section 1425(a) and related statutes confirms that materiality is not an element of the statute. Congress has long prohibited false statements made under oath in the naturalization process, some material and some immaterial, and it has consistently required aliens to demonstrate good moral character in order to be naturalized, a requirement that is not satisfied if the alien gives false but immaterial testimony. Congress deliberately eliminated the materiality requirements in those statutes over the years, including two material false statement offenses that appeared in the same section of a 1906 statute from which Section 1425(a) descends. At the same time, Congress has expanded the scope of the criminal unlawful procurement provision and has specified that it applies to violations of *any* law, not just those that prohibit material falsehoods.

D. The lack of a materiality requirement in Section 1425(a) is not inconsistent with the presence of such a requirement in one provision of the civil denaturalization statute, 8 U.S.C. 1451(a). A number of procedural and substantive differences between Section 1425(a) and Section 1451(a) help explain why Congress thought it useful to permit denaturalization in either civil or criminal proceedings. No reason exists to presume that Congress intended that the presence of an alternative materiality requirement in the former would require courts to imply an element of materiality in the latter.

E. The constitutional avoidance doctrine does not support petitioner's interpretation because no constitutional principle prohibits Congress from requiring that aliens not make false statements under oath, even immaterial ones, in procuring their naturalization. Nor does the rule of lenity apply. Section 1425(a) contains no grievous ambiguity that would require the Court to guess at the statute's meaning. Petitioner's interpretation is inconsistent with the text, structure, and history of the statute and should be rejected.

II. A. This Court should decline to address petitioner's alternative argument that 18 U.S.C. 1015(a) requires proof of materiality even if Section 1425(a) does not. Petitioner's question presented identifies a specific circuit conflict over whether materiality is an element of Section 1425(a). No similar conflict exists concerning whether Section 1015(a) requires proof of materiality: all of the courts of appeals to have considered the question, including two of the circuits identified in petitioner's question presented, have held that it does not. Petitioner also waived any argument that Section 1015(a) requires proof of materiality in the court of appeals. Moreover, although construing Section 1015(a) to require materiality may be an alternative ground for reversing petitioner's conviction on the facts of this case, it would not resolve the question presented, which concerns whether, as a general matter, an alien may be denaturalized following a criminal conviction under Section 1425(a) based on immaterial false statements.

B. Regardless, Section 1015(a) does not require proof of materiality. This Court has rejected any general presumption of materiality in false statement statutes. To the contrary, it has held that such stat-

utes do *not* generally require proof of materiality unless Congress incorporates an express materiality element or a common law term that is understood to require materiality. Congress has included a materiality element in some false statement statutes but not in Section 1015(a). The history of Section 1015(a) confirms that materiality is not required.

III. In any event, petitioner's lies were material and so any error in the jury instructions was harmless. Petitioner lied about her husband's activities and whereabouts during the Bosnian civil war in an effort to conceal the fact that he was a commanding officer in a military unit that committed acts of persecution culminating in genocide. She perpetuated those lies in her naturalization proceedings. The government presented extensive and unrebutted evidence at trial that, had officials known the truth, it would have affected their decision to grant petitioner and her family refugee status and their subsequent decision to grant petitioner citizenship.

ARGUMENT

PETITIONER'S CONVICTION UNDER 18 U.S.C. 1425(a), BASED ON HER FALSE STATEMENTS IN PROCURING NATURALIZATION, SHOULD BE AFFIRMED

I. MATERIALITY IS NOT AN ELEMENT OF 18 U.S.C. 1425(a)

This Court has long recognized that "[t]he definition of the elements of a criminal offense is entrusted to the legislature, particularly in the case of federal crimes, which are solely creatures of statute." *Dixon* v. *United States*, 548 U.S. 1, 7 (2006) (citation omitted; brackets in original). As a consequence, courts "ordinarily resist reading words or elements into a statute that do not appear on its face." *Dean* v. *United States*,

556 U.S. 568, 572 (2009) (citation omitted); see *McMillan* v. *Pennsylvania*, 477 U.S. 79, 85 (1986) ("[A] legislature's definition of the elements of [an] offense is usually dispositive."). This Court has departed from that principle in limited circumstances, such as to supply a *mens rea* element where Congress did not specify one, *e.g.*, *Elonis* v. *United States*, 135 S. Ct. 2001, 2009 (2015), or to give meaning to a common law term incorporated in a criminal statute, *e.g.*, *Neder* v. *United States*, 527 U.S. 1, 23 (1999). Otherwise, the Court enforces the "cardinal" presumption that Congress "says in a statute what it means and means in a statute what it says." *Connecticut Nat'l Bank* v. *Germain*, 503 U.S. 249, 253, 254 (1992). Petitioner's effort to insert the word "material" in Section 1425(a) does not overcome that presumption.

A. The Text Of Section 1425(a) Contains No Independent Materiality Requirement

1. Section 1425(a) makes it a crime to "knowingly procure[] or attempt[] to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or of citizenship." 18 U.S.C. 1425(a). As the court of appeals noted, "the term 'material' is found nowhere in [Section] 1425(a)." Pet. App. 8a. Nor does the statute define a common law offense that has historically required materiality. See *Neder*, 527 U.S. at 22 (inferring that Congress intended to require proof of materiality in the mail, wire, and bank fraud statutes because "the common law could not have conceived of 'fraud' without proof of materiality"). Congress's failure to "so much as mention materiality" in Section 1425(a) provides compelling evidence that the statute does not require such proof. *United States* v. *Wells*, 519 U.S. 482, 490 (1997)

(holding that 18 U.S.C. 1014, which makes it a crime to "knowingly make[] any false statement or report * * * for the purpose of influencing" a bank, does not require proof of a material false statement).

2. Implying an element of materiality in Section 1425(a) would effectively preclude consistent application of the statute. Section 1425(a) is an umbrella provision that punishes the commission of other violations of law in the course of procuring naturalization. By requiring proof that the defendant acted "contrary to law," the statute requires the government to prove the elements of the underlying offense or violation. See *Bridge* v. *Phoenix Bond & Indem. Co.*, 553 U.S. 639, 647-653 (2008).

Some of those predicate offenses already require proof of materiality. A defendant could, for example, violate Section 1425(a) by willfully making a "materially false * * * statement" in a naturalization application, in violation of 18 U.S.C. 1001(a)(2). See, *e.g.*, *United States* v. *Munyenyezi*, 781 F.3d 532, 536 (1st Cir.), cert. denied, 136 S. Ct. 214 (2015); *United States* v. *Latchin*, 554 F.3d 709, 712 (7th Cir. 2009), cert. denied, 558 U.S. 1116 (2010). Or she could make a false statement under oath "with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations," in violation of 18 U.S.C. 1546(a). See *e.g.*, *United States* v. *Alameh*, 341 F.3d 167, 171-172 (2d Cir. 2003). In such cases, the jury would be required to find that the false statement was material in order to establish that the defendant acted "contrary to law."

As petitioner acknowledges (Br. 25), however, other predicate violations do not require proof of a material false statement. The violations at issue in this case

are good examples. Under 8 U.S.C. 1427(a)(3), a defendant is ineligible for naturalization if she lacks "good moral character," which is defined to exclude anyone "who has given false testimony for the purpose of obtaining any benefits" under the immigration laws, 8 U.S.C. 1101(f)(6).[2] In *Kungys* v. *United States*, 485 U.S. 759 (1988), this Court held that those provisions do not require proof that the false testimony concerned a material matter. See *id.* at 779-780 ("Literally read, [Section 1101(f)(6)] denominates a person to be of bad moral character on account of having given false testimony if he has told even the most immaterial of lies with the subjective intent of obtaining immigration or naturalization benefits. We think it means precisely what it says."). Congress has also made it a crime to "knowingly make[] any false statement under oath, in any case, proceeding, or matter relating to * * * naturalization." 18 U.S.C. 1015(a). The courts of appeals that have construed that provision uniformly agree that it does not require proof that the false statement concerned a matter material to the naturalization decision. See *United States* v. *Youssef*, 547 F.3d 1090, 1095 (9th Cir. 2008) (per curiam); *United States* v. *Abuagla*, 336 F.3d 277, 279 (4th Cir. 2003); see also pp. 42-47, *infra*.

Section 1425(a) also encompasses a number of predicate violations to which a materiality requirement could not sensibly be applied. For example, in

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[2] An alien must demonstrate good moral character for at least five years before filing her naturalization application. See 8 U.S.C. 1427(a)(1) and (3). In determining whether the alien has made that showing, however, the government "may take into consideration * * * the applicant's conduct and acts at any time prior to that period." 8 U.S.C. 1427(e).

addition to giving false testimony, an alien is considered to lack "good moral character" (making her ineligible for naturalization) if she has committed certain drug offenses or crimes involving moral turpitude, 8 U.S.C. 1101(f)(3); has been convicted of an aggravated felony, 8 U.S.C. 1101(f)(8); or has engaged in conduct relating to acts of genocide, torture, or extrajudicial killings, 8 U.S.C. 1101(f)(9). An alien could also violate Section 1425(a) by bribing an immigration official, 18 U.S.C. 201(b)(1), or by stealing another person's identity, 18 U.S.C. 1028A(a)(1) and 1424. None of those provisions requires proof of a "material" act. And petitioner offers no explanation for how a jury could rationally determine whether such offenses involved "material" matters if that were an element of Section 1425(a).

In an effort to escape that conundrum, petitioner proposes (Br. 25) a materiality requirement for Section 1425(a) that "would apply only in the subset of cases involving statements and not in cases involving a non-statement predicate offense." Petitioner would thus interpret Section 1425(a) to superimpose a materiality requirement on "statement[]" offenses that do not themselves require proof of materiality but not on "non-statement" offenses that also do not require such proof. *Ibid.* Yet petitioner cites nothing in the text of the statute, or in logic, to suggest that Congress intended such a result. Section 1425(a) does not distinguish between "statement[]" and "non-statement" offenses, nor does it contain any indication that Congress intended to require an element that would supplement some predicate offenses, be redundant of others, and be irrelevant to the remainder. A single statutory provision should be interpreted to have the

same meaning in all of its applications. See *Clark* v. *Martinez*, 543 U.S. 371, 378 (2005). No reason exists to apply a different rule to Section 1425(a).

3. The more natural (and correct) reading of Section 1425(a) is that the defendant must knowingly procure naturalization in a manner that violates the laws governing the naturalization process, including laws that specify who may obtain citizenship and how they must do so. If the underlying violation requires proof of materiality, the jury must find materiality in order to convict. But where Congress has not limited the underlying violation to a material matter—by, for example, providing that certain immaterial false statements are criminally prohibited in a naturalization proceeding or render an alien ineligible for citizenship—it makes little sense to impose a supplemental materiality requirement under Section 1425(a).

That is not to say that evidence of materiality is irrelevant to a conviction under Section 1425(a) whenever the predicate violation encompasses immaterial false statements. Materiality may, for example, be persuasive evidence of *mens rea*: a properly instructed jury, applying a reasonable doubt standard, is less likely to find that a defendant who made immaterial false statements—particularly "trivial" ones (Pet. Br. 36)—*knowingly* lied under oath and *knowingly* violated the law. See 18 U.S.C. 1425(a). The natural inference in such cases may be that the falsehood was a product of confusion, mistake, forgetfulness, or negligence, none of which supports criminal liability under Section

1425(a).[3] But materiality is not an independent element of the statute.

B. The Term "Procures * * * Contrary To Law" Does Not Imply That A False Statement Must Be Material

In an effort to anchor her proposed materiality requirement to the text of Section 1425(a), petitioner focuses on the language "procures * * * contrary to law," which she asserts (Br. 3) "require[s] a causal link—'procurement'—between the underlying violation of law and the naturalization decision." That argument is incorrect for several reasons.

First, petitioner's argument is inconsistent with the structure of Section 1425(a). The statute describes the actor ("Whoever"); her mental state ("knowingly"); the acts she must perform ("procures or attempts to procure"); how those acts are performed ("contrary to law"); and the object of those acts ("naturalization"). 18 U.S.C. 1425(a). That language and structure is most naturally read to mean precisely what it says: a person who knowingly procures naturalization in an unlawful manner (*e.g.*, by violating the laws Congress has enacted governing the eligibility and conduct of those seeking to become U.S. citizens) has violated the statute. In arguing to the contrary, petitioner restructures the statutory text to make "contrary to law" the actor that does the procuring. See Pet. Br. 3 (rewording statute to say "that the underlying violation of law *procured* the naturalization"); *id.* at 21 ("the violation of law must have been the means of procurement"); *id.* at 24 (the "false statement

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[3] Amici's suggestion to the contrary is mistaken. See Asian Am. Advancing Justice et al. Br. 5-9; Immigrant Def. Project et al. Br. 10-19.

[must] 'procure' naturalization"). That is not the statute Congress enacted.

Second, petitioner's interpretation conflicts with her own proposed construction of Section 1425(a). As explained, petitioner would have this Court interpret the statute to impose a materiality requirement for any predicate violation of law that involves a false statement (whether or not the predicate statute itself requires materiality) but not for so-called "non-statement" predicate offenses. See Pet. Br. 25. But petitioner fails to explain how that construction could be correct if the phrase "procures * * * contrary to law"—which applies to *all* violations of Section 1425(a)—itself requires proof of materiality. 18 U.S.C. 1425(a).

Third, petitioner's interpretation is inconsistent with comparable provisions in the civil denaturalization statute, 8 U.S.C. 1451. Section 1451(a) permits denaturalization following a civil proceeding if the government establishes that "naturalization w[as] illegally procured or w[as] procured by concealment of a material fact or by willful misrepresentation." 8 U.S.C. 1451(a). This Court has long interpreted the term "illegally procured" to incorporate the principle that the laws governing naturalization "must be complied with strictly, as in other instances of Government gifts," and has held that an alien's failure to comply with those laws in the course of obtaining citizenship renders his naturalization "illegally procured * * * in the sense that it is unauthorized by and contrary to the law." *Maney* v. *United States*, 278 U.S. 17, 22 (1928) (Holmes, J.); see, *e.g.*, *Fedorenko* v. *United States*, 449 U.S. 490, 506 (1981) (noting the need for "strict compliance" with conditions for naturalization and holding

that "[f]ailure to comply with any of th[o]se conditions renders the certificate of citizenship 'illegally procured'" and void) (citation omitted); *United States* v. *Ginsberg*, 243 U.S. 472, 475 (1917) ("If [naturalization is] procured when prescribed qualifications have no existence in fact it is illegally procured.").

As the court of appeals observed, the Court's illegal procurement cases have generally involved violations of the procedural and substantive prerequisites to naturalization. Pet. App. 15a-17a. The term "contrary to law" in Section 1425(a) is broader, including "not only violations of the * * * administrative requirements for naturalization but also any criminal offense against the United States pertaining to naturalization." *Id.* at 17a; see *id.* at 85a (district court instructs jury that it must find "that [petitioner] acted in violation of at least one law governing naturalization").[4] But in no case has this Court suggested that the underlying violation of law must "cause" the alien's naturalization to be granted—or, conversely,

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[4] Even if the term "contrary to law" in Section 1425(a) were construed to require a violation of the administrative prerequisites to naturalization, the predicate violations in this case would qualify. As explained, an alien must establish her "good moral character" to be eligible for naturalization. 8 U.S.C. 1427(a)(3). Giving false testimony for the purpose of obtaining an immigration benefit precludes a finding of good moral character. 8 U.S.C. 1101(f)(6). So, too, could a violation of 18 U.S.C. 1015(a). See 8 U.S.C. 1101(f) (noting that the statutory enumeration of acts that preclude a finding of good moral character "shall not preclude a finding that for other reasons such person is or was not of good moral character"); 8 C.F.R. 316.10(b)(3)(iii) (providing that a person lacks good moral character if he "[c]ommitted unlawful acts that adversely reflect upon [his] moral character" that "do not fall within the purview" of specific statutory exclusions).

that naturalization would have been denied absent the violation—for it to be unlawfully "procured."

In *Ginsberg*, *supra*, for example, this Court held that an alien had "illegally procured" his citizenship where his final naturalization hearing took place before a judge in chambers rather than in open court as required by law. 243 U.S. at 472-473 (citation omitted). The Court held that this "mistake by the judge" rendered the naturalization illegally procured notwithstanding the lack of any indication that the alien's eligibility for naturalization would have been analyzed differently in an open hearing. *Id.* at 475. Similarly, in *United States* v. *Ness*, 245 U.S. 319 (1917) (Brandeis, J.), the Court upheld the cancellation of an alien's naturalization based on the alien's failure to properly file a certificate "stating the date, place and manner" of his arrival in the United States. *Id.* at 320 (citation omitted). Although the Court expressed no doubt that the alien "possessed the personal qualifications which entitle aliens to admission and to citizenship," it noted that the alien's failure to obtain the certificate was a statutory violation and that "[n]aturalization granted without the certificate having been filed" was "illegally procured." *Id.* at 321, 324-325. And in *Maney*, *supra*, the Court upheld the cancellation of naturalization where the government furnished the alien with necessary documents 11 days too late. 278 U.S. at 21. The district court attached the documents to the alien's naturalization application *nunc pro tunc* and granted him citizenship; this Court held that the filing did not strictly comply with legal requirements and thus the alien's citizenship was illegally procured, even though the alien plainly would have been naturalized absent the violation. *Id.* at 23.

"In case after case," this Court has "rejected lower court efforts to moderate or otherwise avoid the statutory mandate of Congress in denaturalization proceedings" and has upheld denaturalization orders based on an alien's failure to act as "required by statute"—notwithstanding the fact that, had the alien complied with the statute, he would have been "entitle[d] * * * to citizenship." *Fedorenko*, 449 U.S. at 517 (quoting *Ness*, 245 U.S. at 321). An alien who makes false statements under oath or who gives false testimony during the naturalization process, in violation of federal laws that specifically prohibit such conduct, should be held to the same standard.

Petitioner's interpretation also finds no support in the second clause of 8 U.S.C. 1451(a), which authorizes the cancellation of citizenship "procured by concealment of a material fact or by willful misrepresentation." In *Kungys*, *supra*, a plurality of this Court concluded that the "procured by" language in that provision does *not* impose a "causation requirement" or otherwise require the government to "establish that naturalization would not have been granted if the misrepresentations or concealments had not occurred." 485 U.S. at 776, 777. Rather, the plurality determined that the word "procured" requires only "that citizenship be obtained as a result of the application process in which the misrepresentations or concealments were made," and that the further combination of "procured by" and "material" (which does not appear in Section 1425(a)) creates a "rebuttable presumption" that an alien "who obtained his citizenship" as the result of such a process "was *presumably* disqualified." *Ibid.*

Justice Brennan joined the plurality's rejection of a causation requirement, writing separately to express his view that the government must show only "a fair inference" that the alien was not qualified in order to shift the burden to the alien. *Kungys*, 485 U.S. at 783 (Brennan, J., concurring). And two Justices rejected outright the idea that the statute required proof of the concealment or misrepresentation of facts that would likely have affected the government's decision had the truth been known, arguing instead that the alien's "*failure to state the truth*" was itself "material" to the naturalization process. *Id.* at 810 (White and O'Connor, JJ., dissenting) (citation omitted). A causation requirement of the sort petitioner proposes garnered only three votes. See *id.* at 788-789 (Stevens, J., concurring in the judgment). Even less reason exists to infer such a requirement in Section 1425(a), which lacks the terms "procured by" or "material."

C. The Legislative History Of Section 1425(a) Confirms That Proof Of Materiality Is Not Required

Because "the statutory language provides a clear answer" to the question of whether proof of materiality is required to violate Section 1425(a), the construction of the statute "ends there." *Hughes Aircraft Co.* v. *Jacobson*, 525 U.S. 432, 438 (1999); see *Barnhart* v. *Sigmon Coal Co.*, 534 U.S. 438, 450 (2002) (statutory construction ceases "if the statutory language is unambiguous and the statutory scheme is coherent and consistent") (citation omitted). Even if the text were ambiguous, however, the legislative history of Section 1425(a) leaves no doubt that Congress did not intend to limit the scope of that provision to material false statements.

1. The Constitution entrusts Congress with "the power to give or withhold naturalization and to that end 'to establish a uniform Rule of Naturalization.'" *Baumgartner* v. *United States*, 322 U.S. 665, 672 (1944) (quoting U.S. Const. Art. I, § 8, Cl. 4). Since the Founding, Congress has implemented that authority through a series of enactments designed to ensure that only honest and law-abiding persons are naturalized as citizens. In the first naturalization act in 1790, Congress specified (as it has consistently since) that naturalization is a privilege extended only to "person[s] of good character." Act of Mar. 26, 1790, ch. III, § 1, 1 Stat. 103. That requirement reflected the view of several members of the House of Representatives, including James Madison, that Congress should take "the cautions necessary to guard against abuses" of the naturalization process and that individuals who by their character or conduct would not "add[] to the strength or wealth of the community are not the people we are in want of." 1 Annals of Cong. 1150 (1790) (Joseph Gales ed., 1834) (statement of Rep. Madison); see *id.* at 1152, 1153 (statement of Rep. Jackson) (arguing that candidates for naturalization must reflect "the respectability and character of the American name" and should "be able to bring testimonials of a proper and decent behaviour"); *id.* at 1156 (statement of Rep. Sedgwick) (arguing that naturalization should "admit none but reputable and worthy characters").

For nearly as long, Congress has made it a crime to "temporiz[e] with the truth" in naturalization proceedings. *Chaunt* v. *United States*, 364 U.S. 350, 352 (1960). See, *e.g.*, Act of Mar. 3, 1813, ch. XLIII, § 13, 2 Stat. 811 (making it a felony to "falsely make, forge, or counterfeit * * * any certificate or evidence of citizenship").

Some of those provisions have been limited to material false statements while others have not.

In 1870, for example, Congress responded to the proliferation of frauds and abuses in citizenship cases by enacting a comprehensive (and overlapping) set of false statement offenses to "purify the process of naturalization." Cong. Globe, 41st Cong., 2d Sess. 5121 (1870) (statement of Sen. Conkling); cf. *id.* at 4838 (statement of Sen. Vickers) (observing that criminal provisions were "as broad and comprehensive as [they] well can be" and "seem[] to provide for every imaginable case"). See Act of July 14, 1870 (1870 Act), ch. CCLIV, 16 Stat. 254. Some of those offenses required proof of materiality. See *id.* § 1, 16 Stat. 254 (defining "perjury" to include "knowingly swear[ing] or affirm[ing] falsely" in proceedings "relating to the naturalization of aliens").[5] Others did not require such proof. See *id.* § 2, 16 Stat. 254 (making it a crime to "falsely make * * * any oath" or written statement in a "proceeding * * * relating to or providing for the naturalization of aliens," or to "utter" or "use as true" such a statement).

In 1906, Congress further responded to "[g]rievous abuses" of the naturalization process, *Ginsberg*, 243 U.S. at 473, by consolidating the requirements for naturalization and enacting new criminal penalties for misuse of the naturalization process. See Act of June 29, 1906 (1906 Act), ch. 3592, 34 Stat. 596. One of those provisions—the progenitor of Section 1425(a)—made it a crime to "knowingly procure[] naturalization in violation of the provisions of this Act" and provided that, "upon conviction" for that offense, the court

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[5] Perjury required proof of materiality at common law. See *Wells*, 519 U.S. at 491.

"shall thereupon adjudge and declare the final order admitting such person to citizenship void." *Id.* § 23, 34 Stat. 603. In the same section, Congress also created two new false statement offenses that expressly required materiality. See *ibid.* (making it a felony to "knowingly procure[] or give[] false testimony as to any material fact" or to "knowingly make[] an affidavit false as to any material fact" in a naturalization proceeding).

In the years that followed, Congress repeatedly expanded the scope of those criminal provisions, including by eliminating materiality requirements. In 1909, Congress replaced Section 1 of the 1870 Act with a provision that omitted the earlier section's reference to perjury. See Act of Mar. 4, 1909 (1909 Act), ch. 321, § 80, 35 Stat. 1103 (making it a crime to "knowingly swear falsely in any case where an oath is made or [an] affidavit taken" "in any proceeding under or by virtue of any law relating to the naturalization of aliens"). In 1940, Congress eliminated the materiality offenses in Section 23 of the 1906 Act and broadened the scope of the unlawful procurement provision to make it a crime "[k]nowingly to procure or attempt to procure * * * [t]he naturalization of any * * * person, contrary to the provisions of any law." Nationality Act of 1940 (1940 Act), ch. 876, Tit. I, § 346(a)(2), 54 Stat. 1163. The statute further provided, as did the 1906 Act, that a conviction for that offense would result in denaturalization. *Id.* § 338(e), 54 Stat. 1159.[6]

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[6] In his report to Congress on the proposed bill, President Roosevelt noted that the criminal denaturalization provision in the 1906 Act had been "highly successful in its operation," including by averting the "great amount of extra labor which would otherwise have been required in instituting cancellation proceedings in

The language of the unlawful procurement provision was modified to its present form and moved to Section 1425(a) as part of the revision and recodification of the criminal code in 1948. See Act of June 25, 1948, ch. 69, § 1425(a), 62 Stat. 766. The 1948 revision "was not intended to create new crimes" and presumptively "worked [no] change in the underlying substantive law." *Scheidler* v. *National Org. for Women, Inc.*, 547 U.S. 9, 20 (2006) (citations omitted).

2. This history leaves little doubt that Congress did not intend to limit Section 1425(a) to "material" false statements. When Congress has intended to impose such a limitation in a criminal naturalization provision, it has done so clearly, either by using the word "material" (see 1906 Act § 23, 34 Stat. 603) or by using a common law term like "perjury" that is understood to include a materiality requirement (see 1870 Act § 1, 16 Stat. 254). Congress's enactment of other criminal provisions that are not so limited, often in the same statutes and sometimes in the same sections, "speaks volumes." *United States* v. *Shabani*, 513 U.S. 10, 14 (1994); see *Barnhart*, 534 U.S. at 452 ("[W]hen Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress act[ed] intentionally and purposely.") (citations and internal quotation marks omitted).

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equity" to "revoke * * * naturalization fraudulently procured." *To Revise and Codify the Nationality Laws of the United States Into a Comprehensive Nationality Code: Hearings Before the H. Comm. on Immigration and Naturalization on H.R. 6127 Superseded by H.R. 9980*, 76th Cong., 1st Sess. 471 (1940) (reprinting report).

Congress has also repeatedly broadened the scope of criminal naturalization provisions by eliminating language requiring proof of materiality—including, most notably, the material false statement offenses found in the same section of the 1906 Act as the precursor of Section 1425(a). That, too, gives rise to a strong inference "that Congress deliberately dropped the term 'materiality' without intending materiality to be an element" of Section 1425(a). *Wells*, 519 U.S. at 493 (same regarding elimination of materiality requirement in predecessors to 18 U.S.C. 1014).

Moreover, at the same time it eliminated those materiality offenses, Congress expanded the unlawful procurement provision to include the procurement of naturalization "contrary to the provisions of *any* law." 1940 Act § 346(a)(2), 54 Stat. 1163 (emphasis added). The language and structure of that provision is not susceptible to the interpretation petitioner advances: it clearly identified the evil Congress sought to address as the procurement of naturalization in a manner that violates some provision of law, not just the making of material false statements. Those predicate violations would have included the good moral character requirement and the false statement offense (then codified at 8 U.S.C. 746(a)(1) (1940) and later recodified as 18 U.S.C. 1015(a)) that Congress originally adopted in the 1870 Act and amended in 1909 to remove any requirement of materiality.

The meaning of Section 1425(a) is the same today as it was in 1940. Now, as then, materiality is not an element of the statute.

D. Congress's Decision To Include A Materiality Requirement In 8 U.S.C. 1451(a) Is Not Inconsistent With The Absence Of Such A Requirement In Section 1425(a)

As the court of appeals explained, federal law "creates what are essentially two alternative paths for denaturalization," one civil and one criminal. Pet. App. 10a. Under 8 U.S.C. 1451(a), a citizen's naturalization may be set aside in a civil proceeding if the "naturalization w[as] illegally procured or w[as] procured by concealment of a material fact or by willful misrepresentation." Under 8 U.S.C. 1451(e), denaturalization is a mandatory consequence of a criminal conviction under Section 1425(a).

Petitioner asserts (Br. 26) that the presence of a materiality requirement in Section 1451(a) implies that materiality is also an element of Section 1425(a) because "[t]here is no reason to suppose that Congress would have intended to authorize denaturalization in a criminal proceeding * * * based on a *less* demanding substantive standard." Pet. Br. 26. That argument is incorrect.

1. Section 1451(a) originated in the same 1906 enactment that created the precursor to Section 1425(a). See 1906 Act § 15, 34 Stat. 601 (authorizing the government to "institute proceedings * * * for the purpose of setting aside and canceling [a] certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured"). That provision was carried through in subsequent statutes, including the 1940 Act that eliminated the 1906 Act's material false statement offenses, broadened the criminal unlawful procurement provision to its present form, and reaffirmed that a convic-

tion under that provision would result in mandatory denaturalization. See 1940 Act § 338(a), 54 Stat. 1158-1159.

In 1952, Congress amended the civil denaturalization provision to replace the term "fraud" with "concealment of a material fact or willful misrepresentation" and to eliminate the separate ground of illegal procurement. Immigration and Nationality Act (INA), ch. 477, Tit. III, § 340(a), 66 Stat. 260. It did so to resolve judicial confusion over whether the term "fraud" covered both "intrinsic" and "extrinsic" frauds and whether fraud and illegality were distinct concepts. S. Rep. No. 1515, 81st Cong., 2d Sess. 754-769 (1950); see *Costello* v. *United States*, 365 U.S. 265, 271 n.3 (1961). It also reenacted the provision requiring denaturalization following a conviction under Section 1425(a), with no reference to materiality. See INA § 349(g), 66 Stat. 262 (8 U.S.C. 1451(e)).

Congress later thought better of its decision to eliminate the illegal procurement ground, however, and restored it in 1961. See Act of Sept. 26, 1961, Pub. L. No. 87-301, § 18(a), 75 Stat. 656. The House Report explains that Congress did so because the 1952 provision, which prevented civil denaturalization "unless it is proved that the naturalized person has been guilty of wrongdoing amounting to concealment of a material fact or willful misrepresentation," was underinclusive. H.R. Rep. No. 1086, 87th Cong., 1st Sess. 38 (1961) (1961 House Report); see *id.* at 39 ("The congressional mandate that no person shall be naturalized unless possessed of certain qualifications is ineffectual unless there is also statutory provision for revoking citizenship where the prerequisites did not in fact exist. In the majority of such cases it is difficult if

not impossible to prove that there was concealment of material facts or willful misrepresentation."). The House Report noted, for example, that limiting civil denaturalization to the concealment or misrepresentation of material facts would be inconsistent with the "clear and unmistakable purpose and intent" of the good moral character requirement in 8 U.S.C. 1427(a)(3) and 1101(f), which "bar[s] [an alien] from eligibility for naturalization" if, *inter alia*, he, gives false testimony on an immaterial matter. 1961 House Report 39.

The most appropriate inference from this history is the opposite of the one petitioner would draw. Congress specifically limited denaturalization under the second clause of Section 1451(a) to "fraud" or, later, willful "concealment" or "misrepresentation" of a "material fact" (the definition of fraud).[7] Indeed, from 1952 to 1961, that was the *only* ground on which civil denaturalization was available. Congress did not, however, include that requirement in the contemporaneous criminal provision governing the procurement of naturalization contrary to law or in the civil provision mandating denaturalization following a conviction for that offense. This Court's general reluctance to "assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply" is "even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest." *Jama* v. *Immigration & Customs Enforcement*, 543 U.S. 335, 341 (2005). As

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[7] This Court has construed the willfulness and materiality requirements in Section 1451(a) to apply equally to "concealment" and "misrepresentation." *Kungys*, 485 U.S. at 767 (citing *Fedorenko*, 449 U.S. at 507-508 n.28).

with the prior criminal provisions governing naturalization proceedings, the presence of materiality language in 8 U.S.C. 1451(a) indicates that Congress did not intend to impose a similar requirement in Section 1425(a) or the corresponding denaturalization provision in 8 U.S.C. 1451(e). See, *e.g.*, *Barnhart*, 534 U.S. at 452; *Shabani*, 513 U.S. at 14.

2. Petitioner's real complaint relates to the supposed lack of a reason *why* Congress imposed different requirements for denaturalization in civil and criminal cases. Of course, "mere silence in the legislative history cannot justify reading * * * a materiality element into the statute." *Whitfield* v. *United States*, 543 U.S. 209, 216 (2005) (citing *Wells*, 519 U.S. at 496-497). Regardless, petitioner is incorrect.

First, petitioner focuses heavily on the clause of Section 1451(a) permitting denaturalization based on concealment or misrepresentation of a material fact but largely ignores the other clause of the statute, which permits the cancellation of citizenship that was "illegally procured." 8 U.S.C. 1451(a). As explained (see pp. 20-21, *supra*), that ground overlaps substantially with the requirement in Section 1425(a) that naturalization be "procure[d] * * * contrary to law" and does not require proof of materiality. Indeed, Congress restored the illegal procurement ground to 8 U.S.C. 1451(a) in 1961 precisely because the statute's reference to concealment and misrepresentation of a material fact was underinclusive and did not permit denaturalization based on violations of the good moral character requirement—including violations based on false but immaterial testimony. See 1961 House Report 39-40; see also 8 U.S.C. 1101(f).

Second, petitioner overlooks a number of differences between the civil and criminal statutes that help explain why Congress adopted a two-track system and that undercut her assertion that the civil provision is narrower than the criminal one. A criminal conviction under Section 1425(a) exposes the defendant to fines and imprisonment in addition to denaturalization. To obtain those criminal penalties, however, the government must act within ten years of the offense, 18 U.S.C. 3291; it must prove to a jury beyond a reasonable doubt that the defendant "knowingly" procured naturalization contrary to law, 18 U.S.C. 1425(a); and it must satisfy all the usual safeguards of due process that apply in criminal cases, see Pet. App. 27a-28a.

If the government elects to proceed in a civil case under Section 1451(a)—as it must once the statute of limitations for a criminal prosecution has run, see *Costello*, 365 U.S. 281 (noting lack of limitations period for civil denaturalization)—it cannot obtain criminal penalties and will not have the benefit of the speedy trial requirements applicable to criminal cases. On the other hand, the government need not establish that the alien "knowingly" procured her naturalization unlawfully, see *Ginsberg*, 243 U.S. at 475, and may prove its case to a judge by "clear, unequivocal, and convincing" evidence, *Schneiderman* v. *United States*, 320 U.S. 118, 125 (1943) (citation omitted); see *INS* v. *Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984) (noting that "clear, unequivocal and convincing evidence" is "not proof beyond a reasonable doubt") (citation omitted). And in the case of naturalization procured by concealment or misrepresentation of a material fact, the defendant must rebut a presumption that he was

wrongly naturalized. *Kungys*, 485 U.S. at 776-777 (plurality op.); see *id.* at 783 (Brennan, J., concurring).

Moreover, and contrary to petitioner's assertions, the "illegally procured" provision of Section 1451(a) permits denaturalization based on false statements other than those involving the concealment or misrepresentation of material facts, including immaterial false testimony and other false statement offenses that demonstrate a lack of good moral character under 8 U.S.C. 1427(a)(3) and 1101(f). The statute's separate enumeration of material concealments and misrepresentations relieves the government of having to establish an underlying violation of a specific statute to obtain denaturalization on that ground, but it does not mear that material false statements are the *only* ones subject to Section 1451(a).

But even if petitioner were correct that 8 U.S.C. 1451(a) requires proof of materiality, that fact would present no reason to limit the scope of Section 1425(a) by inserting a materiality requirement. For over two centuries, Congress has sought to protect the naturalization process and prohibit illegal and immoral conduct by those seeking citizenship in order "to safeguard the integrity of this priceless treasure." *Fedorenko*, 449 U.S. at 507 (citation and internal quotation marks omitted). Congress has addressed that issue in a "broad[] statutory framework" that uses different tools to reach the same ends, Pet. App. 9a, and no legal principle exists that would require Congress to ensure that its criminal provisions mirror the scope of its civil ones.

E. The Constitutional Avoidance Doctrine And Rule Of Lenity Do Not Apply

1. Petitioner contends (Br. 29-30) that the severity of denaturalization requires the Court to infer a materiality requirement in Section 1425(a) to avoid constitutional concerns. In petitioner's view, any other construction of the statute would make naturalized persons "'second-class' citizens." Pet. Br. 29. That argument is incorrect.

"Naturalization is a privilege, to be given, qualified, or withheld as Congress may determine, and which the alien may claim as of right only upon compliance with the terms which Congress imposes." *United States* v. *Macintosh*, 283 U.S. 605, 615 (1931), overruled on other grounds, *Girouard* v. *United States*, 328 U.S. 61 (1946); see Alexander Porter Morse, *A Treatise on Citizenship* § 29, at 44 (1881) ("Naturalization * * * is a gratuitous concession, which is accorded as a pure favor to an alien desiring to acquire the character of citizen on compliance with certain conditions prescribed by the sovereign power of the adopting state."). Congress is invested with broad constitutional authority to establish the requirements and conditions for obtaining citizenship and to take steps to safeguard the integrity of the naturalization process. See *Macintosh*, 283 U.S. at 615 ("That Congress regarded the admission to citizenship as a serious matter is apparent from the conditions and precautions with which it carefully surrounded the subject."). Those rules are to be "rigidly * * * enforce[d]," and "[n]o alien has the slightest right to naturalization unless all statutory requirements are complied with." *Ginsberg*, 243 U.S. at 474, 475; see *Fedorenko*, 449 U.S. at 506-507. An alien's failure to

strictly comply with those rules renders his naturalization void and permits the revocation of his citizenship, which "was never rightfully his" to begin with. *Johannessen* v. *United States*, 225 U.S. 227, 242-243 (1912); see *Baumgartner*, 322 U.S. at 672; *Ginsberg*, 243 U.S. at 475.

Petitioner concedes that Congress may revoke naturalization that was "unlawfully procured," but suggests a possible constitutional limitation on that power when denaturalization is premised on immaterial false statements. Pet. Br. 29 (citation omitted). No authority exists for such a rule.

"Failure to give frank, honest, and unequivocal answers * * * when one seeks naturalization is a serious matter." *Chaunt*, 364 U.S. at 352. Congress is entitled to demand that aliens give a "[f]ull and truthful response to all relevant questions required by the naturalization procedure" and to "vigorously discourage[]" those who would "temporiz[e] with the truth." *Ibid.* That is no less true when an alien gives false testimony with the intent to obtain naturalization or makes criminal false statements under oath in a naturalization proceeding, even about an immaterial matter. Such lies indicate a lack of good moral character, which "Congress regarded * * * as [a] matter[] of the first importance" in determining whether a person should be granted the privilege of citizenship. *Macintosh*, 283 U.S. at 616. They indicate an alien's willingness to swear falsely and call into question the alien's ability to truthfully accede to the oath of citizenship. And although the "[s]uppressed or concealed facts" underlying the false statements "might [not] in and of themselves justify denial of citizenship," the government is still entitled to know those facts because they

"might [lead] to the discovery of other facts which would justify denial of citizenship." *Chaunt*, 364 U.S. at 352-353.[8]

It is precisely because American citizenship is such a "priceless treasure," *Fedorenko*, 449 U.S. at 507 (citation omitted), that Congress has carefully guarded it. Congress regarded certain false statements in the naturalization process, material or not, to be so serious that it made them crimes and made aliens responsible for those false statements ineligible for citizenship. Petitioner violated those requirements and thus procured her naturalization "contrary to law." 18 U.S.C. 1425(a). No constitutional principle undermines that judgment.

2. Petitioner contends (Br. 28) that her construction of Section 1425(a) should be preferred under the rule of lenity. That rule "applies only when a criminal statute contains a 'grievous ambiguity or uncertainty,' and 'only if, after seizing everything from which aid can be derived,' the Court 'can make no more than a guess as to what Congress intended.'" *Ocasio* v. *United States*, 136 S. Ct. 1423, 1434 n.8 (2016) (quoting *Muscarello* v. *United States*, 524 U.S. 125, 138-139 (1998)); see *Moskal* v. *United States*, 498 U.S. 103, 107 (1990) (noting that the Court has "declined to deem a statute 'ambiguous' for purposes of lenity merely because it was *possible* to articulate a construction

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[8] Those concerns are especially true with respect to information about potential refugees like petitioner. See, *e.g.*, J.A. 51 ("ordinarily individuals are fleeing countries [to] which [U.S. officials] have no access" and thus "the adjudicator is totally reliant on the forms, the information in the forms and the interview," because "there's generally no other way to get information other than those sources").

more narrow than that urged by the Government"). As explained, petitioner's reading of Section 1425(a) is inconsistent with the text, structure, and history of the statute. The rule of lenity does not apply.

II. PETITIONER'S CLAIM THAT MATERIALITY IS AN ELEMENT OF 18 U.S.C. 1015(a) IS NOT PROPERLY BEFORE THIS COURT AND LACKS MERIT IN ANY EVENT

Petitioner contends (Pet. 30-37) that even if this Court concludes that Section 1425(a) does not require proof of materiality, her conviction should nonetheless be vacated because one of her predicate offenses—knowingly making "any false statement under oath, in any case, proceeding, or matter relating to * * * naturalization," in violation of 18 U.S.C. 1015(a)—requires a material false statement. The Court should decline to consider that claim because it is not within the question presented in this case and because petitioner waived it in the court of appeals. In any event, there is no merit to her contention that Section 1015(a) requires proof of materiality.

A. Petitioner's Claim Is Not Encompassed By The Question Presented In This Case And Has Been Waived

In her petition for a writ of certiorari, petitioner asked this Court to grant review to resolve the limited question of "[w]hether the Sixth Circuit erred by holding, *in direct conflict with the First, Fourth, Seventh, and Ninth Circuits*, that a naturalized American citizen can be stripped of her citizenship in a criminal proceeding based on an immaterial false statement." Pet. i (emphasis added). As petitioner acknowledged, the circuit conflict identified in that

question concerns "the existence of a materiality requirement in [Section] 1425(a)." *Id.* at 19; see Pet. Reply Br. 1 (emphasizing circuits' disagreement over whether materiality is "required to establish a violation of 18 U.S.C. § 1425(a)" and arguing that "[t]his Court's review is warranted because the federal courts of appeals are concededly divided on [that] important and recurring question") (citation omitted). All of the cases petitioner cited as evidence of the circuit conflict in her petition, see Pet. 1, 15-16, concern the elements of Section 1425(a), not Section 1015(a) or other predicate offenses. See *Munyenyezi*, 781 F.3d at 536; *Latchin*, 554 F.3d at 712-715; *United States* v. *Alferahin*, 433 F.3d 1148, 1154-1156 (9th Cir. 2006); *United States* v. *Aladekoba*, 61 Fed. Appx. 27, 28 (4th Cir. 2003) (per curiam); *United States* v. *Puerta*, 982 F.2d 1297, 1301 (9th Cir. 1992).

Petitioner briefly asserted in her petition (at 22) that Section 1015(a) "also requires a material false statement," but she did not present that as a distinct question for this Court's review nor is it fairly included within her question presented. See *Wood* v. *Allen*, 558 U.S. 290, 304 (2010) ("[T]he fact that petitioner discussed this issue in the text of his petition for certiorari does not bring it before us. [Supreme Court] Rule 14.1(a) requires that a subsidiary question be fairly included in the *question presented* for our review.") (brackets and citation omitted). Indeed, unlike Section 1425(a), there is *no* circuit conflict over whether Section 1015(a) requires proof of materiality. Every court of appeals to have considered the issue, including two of the circuits identified in petitioner's question presented, have held that materiality is not an element of Section 1015(a). See *Youssef*, 547 F.3d

at 1095 (9th Cir.); *Abuagla*, 336 F.3d at 279 (4th Cir.). The other courts of appeals identified in the question presented have not addressed the issue at all.[9]

Nonetheless, in her brief on the merits, petitioner modifies her own question presented to eliminate any reference to the circuit conflict. See Pet. Br. i. She does so, presumably, in order to accommodate her "alternative" argument that Section 1015(a) would require proof of materiality in her case even if Section 1425(a) does not. *Id.* at 30. This Court should not address that claim.

"As a general rule," this Court "do[es] not decide issues outside the questions presented by the petition for certiorari." *Glover* v. *United States*, 531 U.S. 198, 205 (2001) (citing Sup. Ct. R. 14.1). The petitioner ordinarily "controls the scope of the question presented" in her petition and may "frame the question as broadly or as narrowly as he sees fit." *Yee* v. *City of Escondido*, 503 U.S. 519, 535 (1992). "[H]aving persuaded [the Court] to grant certiorari" to resolve a specific circuit conflict related to the elements of Section 1425(a), however, petitioner is bound by that choice and cannot broaden the question presented at

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[9] In its brief in opposition to the petition for a writ of certiorari, the government noted that the meaning of Section 1015(a) was not at issue because petitioner's conviction under Section 1425(a) was also based on a predicate violation of the "good moral character" requirement in 8 U.S.C. 1427(a)(3), which indisputably does not require materiality. See Br. in Opp. 10-11. And given the precise question petitioner chose to present, the government further argued that the elements of Section 1015(a) were relevant only as evidence of the meaning of Section 1425(a). See *id.* at 12 ("Because neither of the predicate offenses relied upon in this case requires proof of materiality, it would be anomalous to read an implied materiality requirement into Section 1425(a).").

the merits stage to encompass an alternative claim about the elements of a different statute on which no disagreement exists. *City & County of San Francisco* v. *Sheehan*, 135 S. Ct. 1765, 1772 (2015); see *Yee*, 503 U.S. at 536-538 (refusing to consider petitioner's alternative claim where the question presented identified a specific circuit conflict and the alternative claim concerned a "related" issue on which the circuits did not disagree) (emphasis omitted).

Enforcing that rule is particularly appropriate in this case. First, a holding in petitioner's favor regarding Section 1015(a) (but not Section 1425(a)) would not resolve the question on which this Court granted review *or* the revised question petitioner advances in her brief on the merits. At most, such a holding would establish that proof of materiality is required to convict a defendant of a Section 1425(a) offense based on an underlying violation of Section 1015(a); it would not address whether a defendant may be convicted under Section 1425(a)—and denaturalized—based on immaterial false statements that violate the "good moral character" requirement of 8 U.S.C. 1427(a)(3) or another predicate violation of law that lacks a materiality requirement.

Second, a holding that Section 1015(a) requires proof of materiality would not likely affect the validity of petitioner's conviction in this case. As explained, the jury was instructed that it could convict petitioner under Section 1425(a) if it found that she violated Section 1015(a), Section 1427(a)(3), or both. Pet. App. 85a-86a. Although petitioner is correct (Br. 31-32) that an instructional error on one ground of conviction ordinarily precludes summary affirmance of a general verdict on an alternative ground, see *Skilling* v.

United States, 561 U.S. 358, 414 (2010), it does not preclude a finding of harmlessness, *ibid.* Any error concerning Section 1015 was harmless in light of the jury's finding that petitioner knowingly gave false testimony in her refugee interview in order to "gain[] admission into the United States" and gave false testimony in her naturalization interview to conceal that fact. Pet. App. 91a-92a (verdict form); see *id.* at 55a-60a, 64a, 74a; J.A. 82-85, 93-94. Petitioner's conviction is therefore valid under 8 U.S.C. 1427(a)(3) and 1101(f)(6).

Third, and in any event, petitioner expressly waived an argument that Section 1015(a) requires proof of materiality in the court of appeals. See Pet. C.A. Br. 17 (arguing that government's reliance on authority establishing that Section 1015(a) does not require materiality "was misplaced" because "whether [Section] 1015(a) includes a materiality requirement [is] a question not raised here"); *ibid.* (arguing that, "[u]nlike the defendant in" the cited case, petitioner "was not charged with violating [Section] 1015(a)"). Petitioner's waiver provides an additional reason not to consider her belated challenge to her conviction based on a statute other than the one addressed in the question presented. See *Helvering* v. *Wood*, 309 U.S. 344, 348-349 (1940).

B. Materiality Is Not An Element Of Section 1015(a)

1. Regardless, proof of materiality is not required under 18 U.S.C. 1015(a). Petitioner's argument (Br. 33) is based on a supposed "general rule" that Congress is presumed to require proof of materiality when it criminalizes false statements absent "statutory language that in essence supplies the constraints that a materiality requirement would otherwise pro-

vide." No such rule exists. Congress has the unquestioned authority to criminalize false statements made to government officials or in connection with government programs and is "entitled to require that [such] information be given in good faith and not falsely with intent to mislead," even if "the statements were not influential or the information [was] not important." *Wells*, 519 U.S. at 494 (quoting *Kay* v. *United States*, 303 U.S. 1, 6 (1938)).

When Congress seeks to criminalize only material false statements, it usually does so explicitly. Congress has, for example, made it a crime to knowingly and willfully "make[] any materially false, fictitious, or fraudulent statement or representation" in a matter within federal jurisdiction, 18 U.S.C. 1001(a)(2), or to "knowingly make[] any false material declaration" under oath in connection with a court or grand jury proceeding, 18 U.S.C. 1623(a). This Court has implied a requirement of materiality where none was apparent on the face of the statute in only one circumstance. In *Neder*, *supra*, the Court held that the federal mail, wire, and bank fraud statutes, 18 U.S.C. 1341, 1343, and 1344, require proof of materiality notwithstanding the absence of "express materiality requirements" in those statutes. 527 U.S. at 23 & n.7. The Court did so because those statutes incorporate the common law definition of "fraud," which "required a misrepresentation or concealment of *material* fact." *Id.* at 22; see *ibid.* ("[T]he common law could not have conceived of 'fraud' without proof of materiality.").

As this Court has repeatedly explained, however, statutes criminalizing "false statements" do not similarly "presuppose[] materiality." *Wells*, 519 U.S. at 495; see *id.* at 490, 491 (noting that "the term 'false

statement' carries no general suggestion of influential significance" and did not "acquire[] any implication of materiality" at common law); *Kungys*, 485 U.S. at 781 (noting that, unlike fraudulent misrepresentation, "statutory use of the term 'false' or 'falsity'" is not "commonly associated" with "a requirement of materiality"). Congress's failure to "say that a material fact must be the subject of the false statement or [to] so much as mention materiality" provides compelling proof that materiality is not an element of such statutes. *Wells*, 519 U.S. at 490. Indeed, the Court in *Wells* rejected an argument by Justice Stevens—similar to the one petitioner advances here—that courts should presume that Congress intended "that [a] materiality requirement would be implied" in a false statement offense "wherever it was not explicit." *Id.* at 509 (Stevens, J., dissenting); see *id.* at 493 n.14 (majority op.) (rejecting argument).

Section 1015(a) does not mention materiality or incorporate a common law term that historically required materiality. The statute's reference to a "false statement," 18 U.S.C. 1015(a), does not imply materiality. And the rest of the statute confirms that materiality is not an element. The statute prohibits "knowingly mak[ing] *any* false statement," *ibid.* (emphasis added), which is most "naturally" read to have "an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States* v. *Gonzales*, 520 U.S. 1, 5 (1997) (quoting *Webster's Third New International Dictionary* 97 (1976)); see Bryan A. Garner, *Modern American Usage* 51 (2003) ("In affirmative sentences," the word "any" "means 'every' or 'all.'") (emphasis omitted). The rest of the statute requires only that the false statement be made "under

oath" in a proceeding or matter "relating to * * * naturalization, citizenship, or registry of aliens." 18 U.S.C. 1015(a). Congress's decision to include those specific limitations without also including a materiality limitation indicates that materiality is not required. See *Wells*, 519 U.S. at 490 (holding that 18 U.S.C. 1014 does not require materiality because, *inter alia*, the statute's "terms cover 'any' false statement that meets the other requirements in the statute").

That interpretation is confirmed by a comparison to other statutes. Congress has, for example, included a materiality requirement in the general statute prohibiting "false, fictitious, or fraudulent" statements in matters within federal jurisdiction, 18 U.S.C. 1001(a)(2), and in a related statute that prohibits material false statements under oath in immigration matters, 18 U.S.C. 1546(a). Congress's decision to include an express materiality element in those statutes confirms that it did not intend to include that element in Section 1015(a). See, *e.g.*, *Barnhart*, 534 U.S. at 452; *Shabani*, 513 U.S. at 14; cf. *Wells*, 519 U.S. at 493 n.14 (noting that, if Congress intended for courts to infer a materiality requirement in all false statement statutes, its enumeration of that requirement in some statutes would be "surplusage").

The history of Section 1015(a) reinforces the statute's plain meaning. As explained (see pp. 25-26, 28, *supra*), Section 1015(a) is descended from Section 1 of the 1870 Act, which provided that "knowingly swear[ing] or affirm[ing] falsely" in proceedings "relating to the naturalization of aliens" constituted "perjury." 16 Stat. 254. Petitioner concedes (Br. 33-34 n.5) that the "materiality requirement" implicit in the term "perjury" "was dropped in 1909." See 1909 Act

§ 80, 35 Stat. 1103. As with the similar history of Sections 1014 and 1425(a), "[t]he most likely inference in these circumstances is that Congress deliberately dropped the term 'materiality' without intending materiality to be an element of [Section 1015(a)]." *Wells*, 519 U.S. at 493.

2. Petitioner has no response to the textual and historical evidence that Section 1015(a) lacks a materiality element. Instead, she invokes the maxim *de minimis non curat lex* ("the law cares not for trifles") to argue that Section 1015(a) must be construed to contain a materiality requirement to avoid making trivial misstatements a crime. Pet. Br. 32 (citation omitted). But that principle cannot overcome plain statutory text. See *Sandifer* v. *United States Steel Corp.*, 134 S. Ct. 870, 880 (2014). And in any event, the fact that a statement is "immaterial" in a particular context does not necessarily make it a mere "trifle." Petitioner, for example, has consistently argued that her false statements were immaterial, see, *e.g.*, Pet. 23, but it can hardly be said that lying under oath about her husband's whereabouts and activities during the Bosnian civil war in an effort to conceal his service in a military unit that committed genocide—and then perpetuating that lie with more false statements under oath when applying for naturalization—was simply a trifling misstatement about which Congress could have no valid concern.

Petitioner emphasizes (Br. 34-38) this Court's observation in *Wells* that the statute at issue in that case, 18 U.S.C. 1014, requires proof of a false statement made "for the purpose of influencing" a bank, which the Court noted would "not normally take the scope of [Section] 1014 beyond the limit that a mate-

riality requirement would impose." 519 U.S. at 499 (citation omitted). The Court did not suggest, however, that courts must infer a similar limitation in other false statement statutes that do not require materiality, or that this feature of Section 1014 was essential to finding that the statute lacked a materiality requirement. See *id.* at 490-497 (citing text of Section 1014, other statutes, and legislative history to conclude that proof of materiality was not required).

In any event, the same purpose to influence is likely present when a person knowingly lies under oath when seeking naturalization. Individuals do not typically lie under oath without expecting to benefit. While unlikely variant hypotheticals can be imagined, Congress is entitled to legislate with the most likely cases in mind. Moreover, as with Section 1425(a), the *mens rea* requirement of Section 1015(a)—requiring a *knowing* violation of the defendant's oath—helps to ensure that criminal liability is not premised on truly trivial or innocuous misstatements.

3. Congress had good reason to criminalize material and immaterial false statements made under oath in the naturalization process. See pp. 36-37, *supra*. Indeed, immaterial false statements that violate Section 1015(a) may preclude a finding of good moral character under 8 U.S.C. 1101(f)(6) or the residual provisions of 8 U.S.C. 1101(f) and 8 C.F.R. 316.10(b)(3)(iii) and thus act as a statutory bar to naturalization. It does not matter, for that purpose, what the alien lied *about*; what matters is that she took an oath to tell the truth and knowingly violated it.

III. PETITIONER'S MISREPRESENTATIONS TO IMMIGRATION OFFICIALS WERE MATERIAL

Even if this Court were to find that the district court erred by omitting a materiality requirement from its instructions concerning Section 1425(a) or Section 1015(a), any error was harmless because petitioner's false statements to immigration officials were plainly material. See *Skilling*, 561 U.S. at 414.

A material misrepresentation is one that "has a natural tendency to influence, or was capable of influencing, the decision of the decisionmaking body to which it was addressed." *Kungys*, 485 U.S. at 770 (internal quotation marks omitted); see *Neder*, 527 U.S. at 16 (same). Petitioner concedes that this is the proper standard (Br. 24), but she misinterprets it, arguing (Br. 30) that the government must prove that she "would not have obtained American citizenship but for" her false statements. As explained, this Court has rejected such a "requirement of 'but for' causality." *Kungys*, 485 U.S. at 777 (plurality op.). Rather, "materiality looks to the effect on the likely or actual behavior of the recipient of the alleged misrepresentation" and generally requires only that "a reasonable man would attach importance to [the misrepresentation] in determining his choice of action in the transaction." *Universal Health Servs., Inc.* v. *Escobar*, 136 S. Ct. 1989, 2002-2003 (2016) (brackets, internal quotation marks, and citation omitted); see *Neder*, 527 U.S. at 22 & n.5 (same). The facts of this case, which petitioner does not dispute, amply satisfy that standard.

In 1998, petitioner falsely stated under oath to immigration officials that her family feared persecution because her husband refused to serve in the Bosnian

Serb Army during the Bosnian civil war. Pet. App. 51a, 58a-60a. In fact, petitioner's husband had been an officer in a unit of the Bosnian Serb Army that participated in the persecution and genocide of Bosnian Muslims at Srebrenica. *Id.* at 4a, 59a-60a. Petitioner also swore to immigration officials that she and her husband had lived apart between 1992 to 1997, when in fact they had lived together in Bosnia during that time. *Id.* at 4a, 55a-60a. One week after her husband's 2006 arrest for making false statements about his military service, petitioner lied twice on her naturalization application, claiming in response to two different questions that she had not given false or misleading information to government officials while applying for immigration benefits. *Id.* at 5a, 72a, 74a; see J.A. 94, 98-99. Petitioner then used her status as a naturalized citizen to attempt to prevent her husband's removal by having him reclassified as a lawful permanent resident. J.A. 104-105.

Individuals who participate in acts of persecution cannot qualify as refugees. J.A. 36. At the time petitioner was seeking refugee status for her family in the late 1990s, any applicant's military participation in the Bosnian civil war would have been "a matter of concern" because acts of persecution were often "perpetrated by or conducted by military organizations," and no applicant who had participated in such actions would be eligible for refugee status. J.A. 44-45; see J.A. 89 ("typically a person granted asylum would not have been involved in the Republika Srpska Army" due to the "war crimes and other atrocities that were committed"). Moreover, if it were revealed that a principal applicant (like petitioner) had made a misrepresentation about one of the derivative applicants

(like her husband), it would "certainly raise issues" regarding whether the principal applicant was eligible for admission as a refugee. J.A. 50.

If petitioner had answered questions 23 and 24 in her Application for Naturalization truthfully—if she had admitted to giving false or misleading information to immigration officials about her husband's military service and their whereabouts during the civil war when applying for refugee status, see Pet. App. 72a—her answers would have been relevant to determining whether she was "eligible for * * * naturalization." J.A. 86. Petitioner's false statements were relevant to whether she was "properly admitted" as a refugee "or adjusted status properly to that of a permanent resident," which is a necessary precondition for naturalization. *Ibid.* They were also relevant to determining her "good moral character," which "play[s] * * * one of the most important roles" in an "application to become a U.S. citizen." J.A. 97 (capitalization altered). "Lying under oath to an immigration officer or lying to obtain an immigration benefit" would preclude a finding of good moral character. J.A. 80. Because of that, immigration officials considered it important to "make sure" that an applicant for naturalization, like petitioner, was "eligible for all benefits along the way on [her] pathway to citizenship" before acting on her application. *Ibid.* Evidence of "a fraudulently procured earlier benefit or application for an immigration benefit" would have "affect[ed] [the] agency's determination on the applicant's good moral character" and thus her eligibility for citizenship. *Ibid.*

Petitioner's lies also affected the naturalization proceeding itself. Had petitioner checked "yes" to either question 23 or 24, "there would have been fur-

ther questioning" and petitioner's application "would have been sent for a further review * * * because that would question her eligibility." J.A. 99. At a minimum, the individual who was processing petitioner's Application for Naturalization would not have been authorized to grant her application for citizenship and would instead have been required to commence an investigation. *Ibid.*

The evidence clearly shows that petitioner's lies were "capable of affecting" official decisions concerning her naturalization. *Kungys*, 485 U.S. at 771. Petitioner's lies were material to her eligibility for citizenship because they concealed evidence of her lack of good moral character and prevented the government from learning facts that called into question the lawfulness of her immigration history. They also affected the conduct of the naturalization proceeding, allowing petitioner to avoid an investigation and hastening her grant of citizenship, which she then used in an attempt to protect her husband from removal. Any error in failing to instruct the jury on materiality was harmless.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. 8 U.S.C. 1101(f) provides:

Definitions

(f) For the purposes of this chapter—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established is, or was—

(1) a habitual drunkard;

(2) Repealed. Pub. L. 97–116, § 2(c)(1), Dec. 29, 1981, 95 Stat. 1611.

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (10)(A) of section 1182(a) of this title; or subparagraphs (A) and (B) of section 1182(a)(2) of this title and subparagraph (C) thereof of such section[8] (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

(4) one whose income is derived principally from illegal gambling activities;

(5) one who has been convicted of two or more gambling offenses committed during such period;

---

[8] So in original. The phrase "of such section" probably should not appear.

(6) one who has given false testimony for the purpose of obtaining any benefits under this chapter;

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;

(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43) of this section); or

(9) one who at any time has engaged in conduct described in section 1182(a)(3)(E) of this title (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture or extrajudicial killings) or 1182(a)(2)(G) of this title (relating to severe violations of religious freedom).

The fact that any person is not within any of tne foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement,

claim, or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it.

2. 8 U.S.C. 1427 provides in pertinent part:

Requirements of naturalization

(a) Residence

No person, except as otherwise provided in this subchapter, shall be naturalized unless such applicant, (1) immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his application has been physically present therein for periods totaling at least half of that time, and who has resided within the State or within the district of the Service in the United States in which the applicant filed the application for at least three months, (2) has resided continuously within the United States from the date of the application up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

* * * * *

(e) Determination

In determining whether the applicant has sustained the burden of establishing good moral character and the other qualifications for citizenship specified in subsection (a) of this section, the Attorney General shall not be limited to the applicant's conduct during the five years preceding the filing of the application, but may take into consideration as a basis for such determination the applicant's conduct and acts at any time prior to that period.

* * * * *

3. 8 U.S.C. 1451 provides in pertinent part:

Revocation of naturalization

(a) Concealment of material evidence; refusal to testify

It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any district court of the United States in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate,

respectively: *Provided*, That refusal on the part of a naturalized citizen within a period of ten years following his naturalization to testify as a witness in any proceeding before a congressional committee concerning his subversive activities, in a case where such person has been convicted of contempt for such refusal, shall be held to constitute a ground for revocation of such person's naturalization under this subsection as having been procured by concealment of a material fact or by willful misrepresentation. If the naturalized citizen does not reside in any judicial district in the United States at the time of bringing such suit, the proceedings may be instituted in the United States District Court for the District of Columbia or in the United States district court in the judicial district in which such person last had his residence.

* * * * *

(e) Citizenship unlawfully procured

When a person shall be convicted under section 1425 of title 18 of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled. Jurisdiction is conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.

* * * * *

4. 18 U.S.C. 1015 provides:

Naturalization, citizenship or alien registry

(a) Whoever knowingly makes any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship, or registry of aliens; or

(b) Whoever knowingly, with intent to avoid any duty or liability imposed or required by law, denies that he has been naturalized or admitted to be a citizen, after having been so naturalized or admitted; or

(c) Whoever uses or attempts to use any certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship or other documentary evidence of naturalization or of citizenship, or any duplicate or copy thereof, knowing the same to have been procured by fraud or false evidence or without required appearance or hearing of the applicant in court or otherwise unlawfully obtained; or

(d) Whoever knowingly makes any false certificate, acknowledgment or statement concerning the appearance before him or the taking of an oath or affirmation or the signature, attestation or execution by any person with respect to any application, declaration, petition, affidavit, deposition, certificate of naturalization, certificate of citizenship or other paper or writing required or authorized by the laws relating to immigration, naturalization, citizenship, or registry of aliens; or

(e) Whoever knowingly makes any false statement or claim that he is, or at any time has been, a citizen or national of the United States, with the intent

to obtain on behalf of himself, or any other person, any Federal or State benefit or service, or to engage unlawfully in employment in the United States; or

(f) Whoever knowingly makes any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election (including an initiative, recall, or referendum)—

Shall be fined under this title or imprisoned not more than five years, or both. Subsection (f) does not apply to an alien if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making the false statement or claim that he or she was a citizen of the United States.

5. 18 U.S.C. 1425 provides:

Procurement of citizenship or naturalization unlawfully

(a) Whoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or of citizenship; or

(b) Whoever, whether for himself or another person not entitled thereto, knowingly issues, procures or obtains or applies for or otherwise attempts to procure or obtain naturalization, or citizenship, or a declaration of intention to become a citizen, or a certificate of arrival or any certificate or evidence of nationalization

or citizenship, documentary or otherwise, or duplicates or copies of any of the foregoing—

Shall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

RECORD AND BRIEFS

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DIVNA MASLENJAK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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INTRODUCTION

The Government in this case seeks to rend asunder what Congress has joined. The criminal denaturalization statute allows the Government to strip naturalized Americans of their citizenship *only* where they "procure[d]" their naturalization "contrary to law." 18 U.S.C. § 1425(a); 8 U.S.C. § 1451(e). The Government's brief in this case represents an extended attempt to divorce the underlying illegality from the eventual naturalization—in other words, to read the unlawful procurement requirement out of the statute.

The Government backed itself into that corner by successfully urging the district court to instruct the jury that it could convict petitioner upon finding that she (1) "obtained United States citizenship," and (2) "acted in violation of at least one law governing naturalization." Pet. App. 85a. Petitioner objected to those instructions precisely because they omit the statutory glue that connects the underlying illegality to the eventual naturalization. In particular, she argued that the false statements on which the Government based its case were not material. As a general matter, a false statement is material only "if it has a natural tendency to influence, or was capable of influencing, the decision of the decisionmaking body to which it was addressed." *Kungys v. United States*, 485 U.S. 759, 770 (1988) (internal quotation omitted). By definition, a defendant cannot have "procured" a favorable naturalization decision based on a statement with *no* "natural tendency to influence" and *no* "capab[ility] of influencing" that decision.

The Government has no answer to that straightforward, and dispositive, point. Thus, the Government tries to disregard or dilute the statutory unlawful procurement requirement. In particular, the Government argues that Section 1425(a) "punishes the commission of other violations of law *in the course* of procuring naturalization," U.S. Br. 14 (emphasis added)—or alternatively, that a defendant violates that provision if she "procure[s] her naturalization *in a manner* that violates the law," *id.* at 9 (emphasis added). But no matter how the Government tries to reword the statute (in ways that were never presented to the jury), it cannot bridge the procurement gap—*i.e.*, it cannot prove that petitioner "procure[d]" naturalization "contrary to law" if the underlying violation of law had no actual or potential effect on the naturalization decision.

Similarly unavailing is the Government's argument that Section 1015(a)—one of the predicate offenses alleged here—lacks a materiality requirement. Putting aside the Government's ineffective efforts to dodge the issue altogether, the Government's argument boils down to the proposition that a false-statement statute *never* has a materiality requirement unless it specifically includes the word "material." But this Court has never announced any such mechanical rule; to the contrary, this Court has long recognized that Congress enacts statutes against the background norm that the law does not care about immaterial matters (*de minimis non curat lex*). While that background norm may be overcome by statutory language that in effect supplies the constraints that a materiality requirement would otherwise provide, Section 1015(a) includes no such language.

The bottom line here is that, in light of the erroneous interpretation of both Section 1425(a) and Section 1015(a), or either, the Sixth Circuit's decision affirming petitioner's conviction, and her subsequent denaturalization, cannot stand. The Government argues that any such error is harmless, but that fact-intensive issue can and should be litigated on remand. It suffices for this Court to address the question on which it granted review: "[w]hether the Sixth Circuit erred by holding ... that a naturalized American citizen can be stripped of her citizenship in a criminal proceeding based on an immaterial false statement." Pet. i. This Court should answer that question in the affirmative, and accordingly reverse the judgment.

ARGUMENT

I. Section 1425(a) Requires A Causal Link Between A Predicate Violation Of Law And The Procurement Of Naturalization, And An Immaterial False Statement By Definition Establishes No Such Link.

A. The Government Misses The Point By Arguing That Section 1425(a) Contains No Independent Materiality Requirement.

The Government opens its argument with a spirited attack on a straw man. *See* U.S. Br. 12-18. According to the Government, "[t]he text of Section 1425(a) contains no independent materiality requirement," and there is no basis for "[i]mplying an element of materiality" in that provision. U.S. Br. 13, 14 (capitalization modified).

But petitioner is not arguing that there is an "independent materiality requirement" in Section 1425(a), or that any such requirement should be "implied" in that provision. To the contrary, her opening brief contends that "[t]he Sixth Circuit ... *missed the point* by insisting that Section 1425(a) does not contain the word 'material.'" Petr. Br. 24 (emphasis added). And the point is that "[t]he statute *does* contain the word 'procure[],' and a person cannot 'procure' citizenship 'contrary to law' based on an immaterial false statement." *Id.* at 24-25 (emphasis added).

This case, in short, does not turn on the absence of the word "material" from Section 1425(a), but on the presence of the term "procure[] ... contrary to law" in that provision. Truisms like "courts ordinarily resist reading words or elements into a statute that do not appear on its face," U.S. Br. 12 (internal quotation omitted), and "Congress says in a statute what it means and means in a statute what it says," *id.* at 13 (internal quotation omitted), thus have no bearing here. Petitioner does not ask this Court to read any new words into Section 1425(a); rather, she simply asks this Court to give effect to words already there.

The Government likewise proves nothing by insisting that "Section 1425(a) ... encompasses a number of predicate violations to which a materiality requirement could not sensibly be applied," such as bribery of an immigration official. U.S. Br. 15-16 (citing, *inter alia*, 18 U.S.C. § 201(b)(1)). That is true—as petitioner noted in her opening brief, *see* Petr. Br. 25 (citing 18 U.S.C. § 201(b)(1))—but irrelevant. Although this particular case happens to involve a false statement, the broader point is that,

by definition, a defendant cannot "procure" naturalization by means of a violation of law that did not or could not affect the naturalization decision—a point that applies to statement and non-statement cases alike. The relevant statutory requirement is unlawful procurement, not materiality. So the entire first section of the Government's argument, which triumphantly concludes that "materiality is not an independent element of the statute," U.S. Br. 18, is nothing but a statutory frolic and detour.

B. The Term "Procure[] ... Contrary To Law" Requires A Causal Link Between The Underlying Violation Of Law And The Naturalization Decision.

The Government finally joins battle with petitioner in the second section of its argument. *See* U.S. Br. 18-23. In particular, the Government rejects petitioner's position that the statutory term "procures ... contrary to law" "'requires a causal link—"procurement"—between the underlying violation of law and the naturalization decision.'" U.S. Br. 18 (quoting Petr. Br. 3). According to the Government, a naturalized American can be convicted under Section 1425(a), and consequently stripped of her citizenship, based on an underlying violation of law that had *no effect whatsoever* on the naturalization decision. That argument is manifestly incorrect, and indeed (as discussed in Subsection I.D.1 below) would raise constitutional questions of the first order.

As a threshold matter, the Government mischaracterizes the structure and operation of the statute. The Government describes Section 1425(a) as a pure "look through" provision that effectively

allows conviction and denaturalization based on violations of *other* laws: "Section 1425(a) ... is an umbrella statute that imposes criminal penalties on individuals who procure naturalization in a manner 'contrary to' other laws." U.S. Br. 8-9; *see also id.* at 14. Insofar as the Government thereby suggests that Section 1425(a) performs no substantial work of its own, it is mistaken. Proof of the violation of another law is *necessary*, but not *sufficient*, for a violation of Section 1425(a).

Read properly, Section 1425(a) creates a stand-alone crime, punishable by up to 25 years in prison and automatic loss of citizenship, for persons who knowingly "procure[] or attempt[] to procure" naturalization "contrary to law." 18 U.S.C. § 1425(a). The crux of the crime, therefore, is the *link* between the underlying violation of law and the procurement of naturalization. Section 1425(a) does not merely establish an extra penalty for the underlying violation of law; rather, it creates a distinct unlawful procurement offense. And in the absence of a causal link between the naturalization decision and the underlying violation of law, the defendant did not "procure" naturalization "contrary to law."

The Government challenges that straightforward textual argument by saying that it "is inconsistent with the structure of Section 1425(a)," and "restructures the statutory text to make 'contrary to law' the actor that does the procuring." U.S. Br. 18. That is wrong. No one disputes that the *defendant* is the actor who must do the procuring. What the Government misses, however, is that the defendant must do the procuring in a particular way—"contrary to law." If the violation of law has no effect on the procurement, then the defendant has not procured naturalization contrary to law. The Government thus errs by asserting that

anyone who violates the law "*in the course of* procuring naturalization," U.S. Br. 14, 19 (emphasis added), *ipso facto* violates Section 1425(a). Naturally read, the statutory term "procures ... contrary to law" applies only where the defendant procures naturalization by means of an underlying violation of law.

A simple example makes the point. It is a crime to knowingly possess a firearm in a federal facility. *See* 18 U.S.C. § 930. If an applicant for citizenship walks into a government office with a gun, draws and points it at an immigration officer, and demands and obtains a naturalization certificate, the applicant has "procured" naturalization "contrary to law." But if the applicant walks into the government office with a gun, never removes it from his coat, and is presented with a naturalization certificate in the ordinary course, the applicant has not "procured" naturalization "contrary to law," even though he has committed a crime "*in the course* of procuring naturalization." U.S. Br. 14 (emphasis added); *see also id.* at 19. That scenario is the analogue to this case—petitioner was essentially convicted of violating the law "in the course of procuring naturalization," without any proof that the violation affected the outcome of that proceeding in any way. Under the plain language of the statute, that conviction cannot stand.

That commonsense point is fully consistent with the cases cited by the Government. *See* U.S. Br. 19-22 (citing *Fedorenko v. United States*, 449 U.S. 490 (1981); *Maney v. United States*, 278 U.S. 17 (1928); *United States v. Ness*, 245 U.S. 319 (1917); *United States v. Ginsberg*, 243 U.S. 472 (1917)). In each of those cases, a naturalized American "illegally procured" citizenship by means of an underlying violation of law—or, put

differently, the naturalized American would not have obtained citizenship but for the underlying violation of law.

Thus, in *Maney*, *Ness*, and *Ginsberg*, the naturalized citizen failed to comply with an "essential prerequisite" to naturalization (in each case, an absolute procedural requirement), and thereby illegally procured citizenship. *Ness*, 245 U.S. at 322; *see also id.* at 324-25; *Maney*, 278 U.S. at 22-23; *Ginsberg*, 243 U.S. at 473-75. And in *Fedorenko*, the naturalized citizen made a *material* false statement in his initial visa application, and hence, as a matter of law, was ineligible for admission into the United States in the first place. *See* 449 U.S. at 507-16. None of these cases remotely stands for the proposition that *any* violation of law "in the course of procuring naturalization"—*even if it has no actual or potential effect on the naturalization*—means that a naturalized American "illegally procured" citizenship. To the contrary, the Court in these cases would have had no reason to consider whether the violation involved an "essential prerequisite" or a "prescribed qualification" for naturalization, *Ness*, 245 U.S. at 322; *Ginsberg*, 243 U.S. at 475, or was "material," *Fedorenko*, 449 U.S. at 507 & n.28, if it were enough for the Government merely to prove a violation of law that did not or could not affect the naturalization.

Indeed, *Fedorenko* specifically sought to harmonize "two lines of prior decisions of this Court that may, at first blush, appear to point in different directions." *Id.* at 505. The first line recognizes that "the right to acquire American citizenship is a precious right and that once citizenship has been acquired, its loss can have severe and unsettling consequences." *Id.* (citing *Costello v. United States*, 365 U.S. 265, 269 (1961); *Chaunt v. United States*, 364 U.S. 350, 353 (1960);

Baumgartner v. United States, 322 U.S. 665, 675-76 (1944), and *Schneiderman v. United States*, 320 U.S. 118, 122 (1943)). The second line recognizes that there must be "strict compliance with the statutory conditions precedent to naturalization." *Id.* at 506 (citing, *inter alia*, *Maney*, 278 U.S. 17, *Ness*, 245 U.S. 319, and *Ginsberg*, 243 U.S. 472). These two lines of cases, the *Fedorenko* Court declared, actually share a common thread, "reflect[ing] our consistent recognition of the importance of the issues that are at stake—for the citizen as well as the Government—in a denaturalization proceeding." *Id.* at 507.

The Government's position here would upset that essential balance between the Government and its citizens. It is one thing for the Government to establish strict conditions for naturalization and to strip away citizenship that was obtained without meeting those mandatory requirements. But it is a very different thing for the Government to strip away citizenship for a violation of law that had no actual or potential effect on the naturalization. The latter approach makes no effort to accommodate the important interests of *both* the Government *and* its citizens, but instead trivializes or denigrates the citizens' interests.

Equally unavailing is the Government's argument that petitioner's position on procurement is inconsistent with *Kungys*. *See* U.S. Br. 22-23. According to the Government, "[a] causation requirement of the sort petitioner proposes garnered only three votes" in that case. *See id.* at 23.

For starters, petitioner has never purported to delineate the metes and bounds of causation in this context. *See* Petr. Br. 23 n.4. Rather, her position is far more modest: the Government cannot prove that a defendant procured naturalization contrary to law

without—*at a minimum*—establishing a causal link between the procurement of naturalization and an underlying violation of law, and an immaterial false statement by definition establishes no such link.

For present purposes, therefore, the relevant fact is that a clear majority of the Court in *Kungys* endorsed the proposition that the "procurement" requirement of the civil denaturalization statute, 8 U.S.C. § 1451(a), requires a causal link between the procurement of citizenship and an underlying violation of law. The three-Justice plurality emphasized that "the 'procured by' language can and should be given some effect beyond the mere requirement that the misrepresentations have been made in the application proceeding." 485 U.S. at 777 (Scalia, J., joined by Rehnquist, C.J., and Brennan, J.). Another three Justices, concurring in the judgment, likewise agreed that "procurement" requires a causal link between naturalization and a predicate violation of law. *See id.* at 787 (Stevens, J., joined by Marshall & Blackmun, JJ., concurring in the judgment) (characterizing procurement as a "causation requirement" that "requires that the Government demonstrate that it relied on the misrepresentation in deciding whether to allow the applicant to become a citizen"); *see also id.* at 788 (procurement "requires that the material misrepresentation must have had the effect of allowing the person to obtain citizenship when a truthful statement would have led directly or after investigation to the denial of citizenship"). Both the plurality and the concurrence thus rejected the Government's argument (made in *Kungys* and again here) that a naturalized American could have "procured" citizenship based on a violation of law

that had no actual or potential effect on the naturalization decision.

Quite apart from its legal shortcomings, the Government's extreme position in this case would have the inevitable effect of rendering naturalized Americans "second-class" citizens, *Knauer v. United States*, 328 U.S. 654, 658 (1946), by leaving them at the mercy of overzealous prosecutors. As petitioner's *amici* have pointed out, applicants are unlikely to answer the voluminous, ambiguous, and often deeply personal questions on naturalization forms without even arguably omitting some immaterial information. *See* Br. of *Amici Curiae* Immigrant Defense Project *et al.* at 10 ("'Have you **EVER** been a member of, involved in, or in any way associated with, any organization, association, fund, foundation, party, club, society, or similar group in the United States or in any other location in the world?'") (quoting Form N-400; emphasis and capitalization in original); *see also* Br. of *Amici Curiae* Asian Americans Advancing Justice *et al.* at 6 (same). While some omissions may be inadvertent, others may be knowing but still irrelevant to the naturalization decision. An applicant may not wish to disclose, for example, that he or she once attended a meeting of a gay students' association in school. Under the Government's interpretation, such an omission could lead to denaturalization and deportation, even though it had no bearing whatsoever on the procurement of citizenship.

C. The Legislative History Is Consistent With Giving The Term "Procure[] ... Contrary To Law" Its Ordinary Meaning.

The Government inexplicably devotes nine pages (almost a quarter of its argument) to an entirely unilluminating discussion of the legislative history of

Section 1425(a) and its civil analogue, Section 1451(a). *See* U.S. Br. 23-32. The Government devotes the first part of that argument to the proposition that "the legislative history of Section 1425(a) leaves no doubt that Congress did not intend to limit the scope of that provision to material false statements." *Id.* at 23. And the Government devotes the second part of that argument to the proposition that the legislative history explains the apparent anomaly of requiring material false statements for *civil* denaturalization under Section 1451(a), but not for *criminal* denaturalization under Section 1425(a). *See id.* at 29-32. But the legislative history supports neither of those propositions.

1. The History Of Section 1425(a)

The Government's first foray into legislative history is little more than a replay of its opening straw-man argument that Section 1425(a) does not contain an independent materiality requirement. *See* U.S. Br. 23-28. As the Government explains, "the progenitor of Section 1425(a)" is Section 23 of the Act of June 29, 1906, which made it a crime to "'knowingly procure[] naturalization in violation of the provisions of this Act.'" U.S. Br. 25 (quoting Act of June 29, 1906, ch. 3592 § 23, 34 Stat. 603). That Act was amended in 1940 to make it a crime "[k]nowingly to procure or attempt to procure ... [t]he naturalization of any ... person, contrary to the provisions of any law." *Id.* at 26 (quoting Nationality Act of 1940, ch. 876, Tit. I, § 346(a)(2), 54 Stat. 1163). And the Act was "modified to its present form" and moved to its current location as part of the overhaul of the federal criminal code in 1948. *See id.* at 27

(citing Act of June 25, 1948, ch. 69 § 1425(a), 62 Stat. 766).

That history, according to the Government, "leaves little doubt that Congress did not intend to limit Section 1425(a) to 'material' false statements." *Id.* But, as noted in Section I.A above, petitioner does not contend that Section 1425(a) is "limit[ed] ... to 'material' false statements." *Id.* Rather, by its plain terms, Section 1425(a) (like its statutory progenitors tracing back to 1906) is limited to the knowing "procure[ment]" of naturalization contrary to law. Neither the English language nor basic principles of logic have changed in any relevant way since 1906: if a predicate violation of law had no actual or potential effect on a naturalization decision, then the defendant could not have "procured" naturalization "contrary to law." Nothing in the legislative history of Section 1425(a) suggests that Congress intended for the the term "procure[] ... contrary to law" to carry anything but its ordinary meaning in this context. The Government's conclusion that the legislative history proves that "materiality is not an element of the statute," U.S. Br. 28, thus proves nothing.

2. The History Of Section 1451(a)

The Government's next foray into legislative history represents an attempt to explain the anomaly that, under the Government's position, "'Congress would have intended to authorize denaturalization in a criminal proceeding ... based on a *less* demanding substantive standard'" than in a civil proceeding. U.S. Br. 29 (quoting Petr. Br. 26; emphasis in original).

But nothing in the legislative history rationalizes that anomaly. As the Government notes, Section 1451(a) stems from the same 1906 statute as Section 1425(a). *See* U.S. Br. 29. The 1906 progenitor of Section 1451(a) authorized the Government to "institute proceedings ... for the purpose of setting aside and canceling [a] certificate of citizenship [1] on the ground of fraud or [2] on the ground that such certificate of citizenship was illegally procured." Act of June 29, 1906, ch. 3592 § 15, 34 Stat. 601. The provision was amended in 1952 to replace the term "fraud" with "concealment of a material fact or willful misrepresentation" and to delete the separate ground of illegal procurement. *See* Immigration & Nationality Act of 1952, ch. 477, Tit. III, § 340(a), 66 Stat. 260. And the provision was again amended in 1961 to restore the ground of illegal procurement. *See* Act of Sept. 26, 1961, Pub. L. No. 87-301, § 18(a), 75 Stat. 656. Since 1961, the civil denaturalization provision has remained essentially unchanged.

From this history, the Government draws the "inference" that Congress did not intend to "limit[] denaturalization" under Section 1425(a) to material misrepresentations or omissions because Congress included such a limitation in Section 1451(a). *See* U.S. Br. 31. But the United States did not need to turn to history to make this point; it could have made the same point from the statutory text. Either way, the point is exceedingly weak. Again, petitioner does not contend that Section 1425(a) includes an independent materiality element (as does the second clause of Section 1451(a)). Rather, she contends only that a defendant cannot "procure" naturalization "contrary to law" based on an immaterial false statement. Nothing in 1451(a) casts any doubt on

that contention. There is no reason to think that the "illegal procurement" clause of Section 1451(a) would allow denaturalization based on an immaterial false statement. The bottom line is that it remains utterly anomalous to suppose that Congress intended to authorize denaturalization in a criminal proceeding but not a civil proceeding based on the very same statement.

D. The Constitutional Avoidance Doctrine And The Rule Of Lenity Support Giving The Term "Procure[] ... Contrary to Law" Its Ordinary Meaning.

1. Constitutional Avoidance

The Government offers no real response to petitioner's constitutional avoidance argument, but instead mischaracterizes the argument. According to the Government, petitioner "contends that the severity of denaturalization requires the Court to infer a materiality requirement in Section 1425(a) to avoid constitutional concerns." U.S. Br. 35. That is not petitioner's argument.

Rather, petitioner's argument is that the Constitution gives Congress no denaturalization power at all—subject to just one exception: the power to strip naturalized Americans of "unlawfully procured" citizenship. *See* Petr. Br. 29 (citing *Afroyim v. Rusk*, 387 U.S. 253, 267 n.23 (1967)). And there is absolutely no basis to think that the Constitution grants Congress the power to strip a naturalized American of her citizenship based on a violation of law that had no actual or potential effect on the naturalization decision. Congress' narrow denaturalization power may not be used to punish natural-born or naturalized Americans, but only to

set aside "naturalization unlawfully procured." *Afroyim*, 387 U.S. at 267 n.23. Because there is no reason to conclude, as a constitutional matter, that a naturalized American "unlawfully procured" her citizenship if the predicate illegality had no actual or potential effect on the naturalization decision, the statute should be construed in tandem to preserve its constitutionality. *See, e.g., Skilling v. United States*, 561 U.S. 358, 403 (2010).

2. The Rule Of Lenity

The Government declares that "[t]he rule of lenity does not apply" because petitioner's "reading of Section 1425(a) is inconsistent with the text, structure, and history of the statute." U.S. Br. 38. As explained in detail above, petitioner disagrees with the Government on each of those points. But if there were any room for doubt on this score, the rule of lenity (which applies with special force in the denaturalization context, *see, e.g., Schneiderman*, 320 U.S. at 122) would demand the more defendant-friendly interpretation.

II. Section 1015(a) Requires Proof Of A Material False Statement.

The Government adheres to its overall theme by arguing that Section 1015(a), a predicate offense for petitioner's conviction under Section 1425(a), *also* imposes criminal liability for immaterial false statements. That theory—which largely depends on a blinkered reading of *United States v. Wells*, 519 U.S. 482 (1997)—likewise misses the mark.

A. The Government's Procedural Arguments Are Meritless.

As a threshold matter, the Government insists that the Section 1015(a) issue is not properly before the Court because it is not "fairly included" within the Question Presented. U.S. Br. 39.* If the Government means to suggest that the proper interpretation of Section 1015(a) is separate and distinct from the question whether petitioner "can be stripped of her citizenship in a criminal proceeding based on an immaterial false statement," Pet. i, it is obviously wrong. As the petition makes clear, petitioner's challenge to her loss of citizenship for an immaterial false statement rests on two alternative grounds: *first*, that, regardless of what the predicate offenses require, Section 1425(a) *itself* requires petitioner's statements to be material because it is impossible to "procure" citizenship by means of an immaterial false statement; and, *second*, that, in any event, Section 1425(a) requires petitioner's statements to be material because Section 1015(a), a predicate offense, imposes that requirement. As is always the case with alternative arguments, the Court may decide the case on the basis of one argument without reaching the other. But the arguments nevertheless are part and parcel of answering the same question.

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* The petition presented the following question: "Whether the Sixth Circuit erred by holding, in direct conflict with the First, Fourth, Seventh, and Ninth Circuits, that a naturalized American citizen can be stripped of her citizenship in a criminal proceeding based on an immaterial false statement." Pet. i.

The Government tries to block consideration of Section 1015(a) by focusing on the words "'in direct conflict with the First, Fourth, Seventh, and Ninth Circuits,'" U.S. Br. 38 (quoting Pet. i), pointing out that the only "conflict" among the Circuits involves the interpretation of Section 1425(a), not Section 1015(a), *see id.* at 38-39. But this is truly straining at a gnat. Petitioner framed a broad question that encompassed both Section 1425(a) and Section 1015(a), and understandably highlighted a circuit split without specifying that it applied only to one aspect of that question. That framing is entirely consistent with this Court's Rule 14.1(a), which does not require petitioners to break Questions Presented into component parts. To the contrary, the Rule seeks to eliminate complexity by declaring that "[t]he statement of any question presented is deemed to comprise every subsidiary question fairly included therein," and admonishes petitioners to frame questions that are "short," not "repetitive," and "without unnecessary detail."

And if there were any doubt about the scope of the Question Presented, it was erased in the body of the petition, which expressly challenged petitioners' conviction under Section 1425(a) based on the Sixth Circuit's interpretation of Section 1015(a). *See* Pet. 22. The Government's brief in opposition raised no objection to inclusion of this argument—and, indeed, addressed it at some length, *see* Opp. 10-13—but the Government now asserts that a petitioner cannot present additional questions in the body of the petition itself. *See* U.S. Br. 39 (citing *Wood v. Allen*, 558 U.S. 290, 304 (2010)). But petitioner did not smuggle in a "different question" in the body of the petition, *Wood*, 558 U.S. at 304; rather, she

explained in detail why the Court should consider Section 1015(a) in deciding whether "a naturalized American citizen can be stripped of her citizenship in a criminal proceeding based on an immaterial false statement." Pet. i. Having first demonstrated that Section 1425(a) itself requires materiality in false statement cases, petitioner then explained why, in any event, Section 1425(a) requires materiality when a predicate offense, such as Section 1015(a), requires it. *See* Pet. 22. Both issues are thus properly before the Court.

The Government's other attempt to ward off review of the Section 1015(a) issue—by asserting that petitioner "waived" the issue below, *see* U.S. Br. 42—is equally insubstantial. Far from finding a waiver of this issue, which was controlled by circuit precedent, the Sixth Circuit squarely addressed and decided it. *See* Pet. App. 18-19a. Nothing more is necessary to present the issue for review: this Court will consider issues actually decided by the lower courts regardless of whether the parties raised them. *See, e.g., Lebron v. National R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995).

B. The Government's Substantive Arguments Are Meritless.

The Government's reading of Section 1015(a) is, if anything, even more expansive than its reading of Section 1425(a). According to the Government, Congress intended to impose severe punishment (including up to five years in prison) for any false statement in a naturalization proceeding, *even if* the statement could not have influenced the naturalization decision and *even if* the applicant did not make the false statement for that purpose.

Given that the law traditionally does not care about immaterial matters, *see* Petr. Br. 32-33, it is highly unlikely that Congress had that kind of harsh result in mind—one that gives prosecutors license to turn trivial falsehoods into serious crimes. Against that background, it is notable that the Government fails to cite a single case upholding heavy criminal penalties for statements that were neither material nor uttered for the purpose of influencing an ultimate decision.

As it did with Section 1425(a), the Government emphasizes that Section 1015(a) does not contain the word "material." That would be a good starting point, of course, if the Government could back it up by showing that Congress requires false statements to be material only when it says so expressly. In fact, however, the Government immediately acknowledges just the opposite: that Congress has required proof of materiality in several federal statutes, even though the word "material" is nowhere to be found in the statutory text. *See* U.S. Br. 43 (citing *Neder v. United States*, 527 U.S. 1, 23 & n.7 (1999)). That is hardly surprising. As noted in petitioner's opening brief, *see* Petr. Br. 36-37, the U.S. Code is a checkerboard of false-statement statutes, many of which contain a specific reference to materiality and many of which do not. Unless it were clear that each of the omissions reflected a deliberate congressional choice—something that the Government does not even attempt to establish—the proper approach to statutory interpretation is to consider each statute on its own terms.

Lacking an absolute text-based rule, the Government winds up basing its "no materiality"

argument almost entirely on this Court's decision in *Wells*. But *Wells* involved a very different statute. Although Section 1014 did not contain an explicit materiality requirement, it did contain something else: a requirement that the defendant have made the false statement "for the purpose of influencing" a bank. As the Court observed, that specific purpose-of-influencing requirement made it likely that Section 1014 would apply almost exclusively to material statements. *See* 519 U.S. at 499; *see also Kungys*, 485 U.S. at 780-81 (similar). The Court thus concluded that its interpretation of Section 1014 would not have the unintended consequence of "mak[ing] a surprisingly broad range of unremarkable conduct a violation of federal law." 519 U.S. at 498 (internal quotation omitted).

The Government dismisses the importance of this analysis, saying that "[t]he Court [in *Wells*] did not suggest ... that courts must infer a similar limitation in other false-statement statutes that do not require materiality, or that this feature of Section 1014 was essential to finding that the statute lacked a materiality requirement." U.S. Br. 47. But that misses the point. Even before *Wells*, it was generally understood that a proper textual inquiry requires consideration of background interpretive norms like *de minimis non curat lex*. That is precisely the inquiry that the Court conducted in *Wells*. And, in doing so, it placed significant weight on the statute's purpose-of-influencing requirement because that requirement effectively imposed the same kind of limitation on Section 1014—preventing its application to minor falsehoods—as an explicit materiality requirement would have done.

Changing tack, the Government tries to fit this case within the *Wells* reasoning, arguing that applicants for naturalization will typically make false statements—even immaterial ones—for the purpose of influencing the naturalization decision. Even if that were so, the inescapable fact is that Section 1015(a) imposes no such purpose requirement. While it may be reasonable to suppose that statutes containing an explicit purpose requirement will result in convictions only for material statements, it is too great a leap to indulge the same belief about statutes that lack a purpose requirement (and thus do not require the jury to make any such finding). Indeed, the *amici* briefs in this case provide numerous examples of immaterial false statements that applicants might make for reasons having nothing to do with an attempt to influence official decisionmaking.

All in all, despite its mix of procedural and substantive arguments, the Government's brief is most striking for what it leaves out: any attempt to explain why Congress would want to subject someone to a five-year prison term for making false statements that were not intended to influence official action and that, in fact, had no possibility of doing so. No one disputes that honesty is the best policy, but there are obvious limits to what Congress will do in its pursuit of good policies. *See, e.g.*, *Bond v. United States*, 134 S. Ct. 2077, 2087-93 (2014). Yet instead of dealing with that question directly—by offering some plausible justification for punishing immaterial statements—the Government ultimately ducks the question altogether, abruptly abandoning its arguments about the proper interpretation of Section 1015(a) to make a case-specific argument

that petitioner's particular statements *were* material. *See* U.S. Br. 46. But that argument, which is nothing more than a preview of the Government's harmless-error argument, sheds no light whatsoever on the question whether Section 1015(a) applies to immaterial statements. The answer is no, and the Sixth Circuit's contrary holding provides an independent reason for reversing its judgment.

III. This Court Need Not And Should Not Perform A Harmless Error Analysis In The First Instance.

Finally, the Government argues that "any error" in the jury instructions "was harmless because petitioner's false statements to immigration officials were plainly material." U.S. Br. 48. But this Court is "a court of review, not of first view." *Expressions Hair Design v. Schneiderman*, 137 S. Ct. __, 2017 WL 1155913, at *7 (Mar. 29, 2017) (internal quotation omitted). This Court need not and should not root through the extensive factual record (including a jury trial) to determine whether the error(s) here—which the Government affirmatively invited, *see* Petr. Br. 37 n.6, and which (in sharp contrast to *Neder*) did not go "uncontested" at trial, 527 U.S. at 17—were harmless beyond a reasonable doubt.

The lower courts are better equipped to undertake such a fact-intensive inquiry after plenary briefing by the parties. Indeed, this Court itself undertakes such review only "sparingly," *United States v. Hasting*, 461 U.S. 499, 510 (1983), and "normally leaves it" to the lower courts "to consider whether an error is harmless," *Hurst v. Florida*, 136 S. Ct. 616, 624 (2016); *see, e.g.*, *Shaw v. United States*, 137 S. Ct. 462, 470 (2017); *Kingsley v. Hendrickson*, 135 S. Ct.

2466, 2476-77 (2015); *McFadden v. United States*, 135 S. Ct. 2298, 2307 (2015); *Skilling*, 561 U.S. at 414; *Black v. United States*, 561 U.S. 465, 474 (2010).

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment.

April 12, 2017

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RECORD AND BRIEFS

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Supreme Court of the United States

DIVNA MASLENJAK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF ASIAN AMERICANS ADVANCING JUSTICE | AAJC, NATIONAL ASSOCIATION OF LATINO ELECTED AND APPOINTED OFFICIALS EDUCATIONAL FUND AND 72 OTHER ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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8 U.S.C. § 1427(a) 7

8 U.S.C. § 1451(e) 11, 14

18 U.S.C. § 1015(a) 3, 4

18 U.S.C. § 1425(a) 3, 4, 15

Sup. Ct. R. 37.6 1

OTHER AUTHORITIES

Andrew Tae-Hyun Kim, *Immigrant Passing*, 105 Ky. L.J. 95 (2017) 12

Arelis R. Hernández and Patricia Sullivan, *'It's fear, fear, fear': As enforcement increases, more immigrants avoid public places, Wash. Post*, Feb. 26, 2017 12

Elinor R. Jordan, *What We Know and Need to Know about Immigrant Access to Justice*, 67 S.C. L. Rev. 295 (2016) 7

Form N-400 ..... 5, 6, 8

Cited Authorities

Page

Jie Zong and Jeanne Batalova, *Naturalization Trends in the United States*, Migration Policy Institute (Aug. 10, 2016), available at http://www.migrationpolicy.org/article/naturalization-trends-united-states 11

Leslye E. Orloff, Mary Ann Dutton, Giselle Aguilar Hass, Nawal Ammar, *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA Women's L.J. 43 (2003) 11

Manuel Pastor and Jared Sanchez, *Promoting Citizenship: Assessing the Impacts of the Partial Fee Waiver* (May 2016) 12, 13

Manuel Pastor and Justin Scoggins, *Citizen Gain: The Economic Benefits of Naturalization for Immigrants and the Economy* (Dec. 2012) 18, 19

Maria E. Enchautegui and Linda Giannarelli, *The Economic Impact of Naturalization on Immigrants and Cities* (Dec. 2015).....13, 18, 19

Mary C. Waters and Marisa Gerstein Pineau, National Academics of Science, Engineering and Medicine, *The Integration of Immigrants into American Society* (2015) 13

Mike Lillis, *Mayors Press Congress to Oppose Sanctuary City Bills*, The Hill, July 22, 2015 12

Cited Authorities

Page

National Foundation for American Policy, *Reforming the Naturalization Process*, (2011) 5

National Immigration Forum, *The Road to Naturalization: Addressing the Barriers to U.S. Citizenship* 13

Number of N-400 Applications for Naturalization by Category of Naturalization, Case Status, and USCIS Field Office Location (2016), *available at* https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-n-400-application-naturalization 10

Pew Research Center, *Immigrant naturalization applications climb, but not as much as past years* (Sept. 2016) 19

Taylor Dobbs, *State In The Process Of Fixing Error That Caused Ineligible Voters To Be Registered*, Vermont's NPR News Source, Feb. 3, 2017, *available at* http://digital.vpr.net/post/state-process-fixing-error-caused-ineligible-voters-be-registered#stream/0 9

Study: Latinos Fear Reporting Crimes Because of Deportation Push, United Press International (May 7, 2013) 11

Cited Authorities

Page

The Economic Value of Citizenship for Immigrants in the United States (Sept. 2012), http://www.migrationpolicy.org/pubs/citizenship-premium.pdf 18

United States Citizenship and Immigration Services, *A Guide to Naturalization* (revised Nov. 2016), available at https://www.uscis.gov/sites/default/files/files/article/M-476.pdf 17

USCIS Policy Manual, available at https://www.uscis.gov/policymanual/Print/PolicyManual.html 17, 20

INTEREST OF *AMICI CURIAE*[1]

Amici are 74 national and local non-profit organizations and bar associations that promote equality, justice, and civil rights for immigrants and the value of immigration to the nation.

Asian Americans Advancing Justice | AAJC (AAJC) is a national nonprofit organization founded in 1991. Based in Washington, D.C., AAJC works to advance and protect civil and human rights for Asian Americans and to build and promote a fair and equitable society for all. AAJC is one of the nation's leading experts on issues of importance to the Asian American community, including immigration and immigrants' rights. Along with its Advancing Justice affiliates, AAJC works to promote justice and bring national and local constituencies together through community outreach, advocacy, and litigation.

The National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund is a Section 501(c)(3) nonprofit, nonpartisan organization whose members include the nation's more than 6,100 elected and appointed Latino officials. NALEO Educational Fund is dedicated to facilitating full Latino participation in the American political process, from citizenship to public service.

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1. Both Petitioner and Respondent have consented to the filing of this brief. Petitioner has filed a blanket consent to the filing of amicus curiae briefs. A letter of consent from Respondent has been filed with the Clerk. Pursuant to Rule 37.6, the undersigned hereby affirm that no counsel for a party authored this brief in whole or in part and no person other than amici or their counsel made a monetary contribution to the preparation or submission of this brief.

AAJC, NALEO, and 15 other amici are members of the New Americans Campaign, a nonpartisan, national network of legal-service providers, faith-based organizations, businesses, foundations and community leaders dedicated to promoting citizenship and removing barriers to naturalization. Through free naturalization workshops, clinics, and other services, the New Americans Campaign has helped complete over 250,000 naturalization applications, saving eligible immigrants and their families over $206 million in legal and application fees.

Descriptions of the additional 72 amici are included in the appendix to this brief. Many amici also provide direct naturalization services and are familiar with the challenges that eligible immigrants face in applying for naturalization. All amici work with or on behalf of immigrant communities and are concerned about the harmful effects of chilling naturalization and broadly penalizing naturalized Americans for minor lapses.

This case addresses an issue of great importance to amici and the communities on behalf of which amici advocate: whether an immaterial false statement or omission in an immigration status proceeding will be punishable with the severe consequences of denaturalization and criminal prosecution. As amici know firsthand, the naturalization process can be long and complicated and requires applicants to make hundreds of factual representations, in response to often ambiguous questions, about events spanning their entire lives. If any trivial factual misstatement could violate the statutes at issue in this case, untold numbers of naturalized citizens would be at risk of losing their citizenship and liberty years after they have become full American citizens.

Equally important, the mere threat of denaturalization and prosecution for irrelevant misstatements made years ago would further discourage communities that are already reluctant to seek citizenship. The threat of denaturalization would effectively create two unequal classes of citizenship, with natural-born citizens secure in their rights and status in a way that naturalized citizens would not be. Amici submit this brief to highlight the great harms to naturalized citizens and the country that would result if naturalized citizenship could be stripped because of any immaterial false statement.

SUMMARY OF THE ARGUMENT

The Sixth Circuit's holding—that under 18 U.S.C. § 1425(a) and 18 U.S.C. § 1015(a), *any* knowing false statement or omission can be grounds for denaturalization and criminal prosecution—would have dire consequences for naturalized citizens, significantly discourage lawful immigrants from seeking citizenship, and undermine a cornerstone of American society and values. As amici know well, the naturalization process is rife with potential for irrelevant misstatements, particularly for applicants who speak English as a second language and apply without the benefit of professional assistance. If any irrelevant misstatement can be grounds for denaturalization and prosecution, a substantial number of citizens will be placed at risk.

The risk of criminal prosecution and denaturalization threatens to create two unequal classes of citizens. Natural-born Americans would enjoy complete security in their citizenship, while naturalized immigrants would fear losing their citizenship and freedom—even years

after naturalizing—based on any knowing misstatement or omission during the naturalization process, no matter how trivial. The fear that would hang over the families and communities of naturalized citizens would undermine the stability and security that immigrants seek in naturalizing and further depress already low naturalization rates among immigrants who are eligible for citizenship. Unlike citizens born here, naturalized citizens would be subject to disproportionate and unfair punishments for irrelevant misstatements and omissions—that have no bearing on their qualification for citizenship—and suffer a host of other inequities in the criminal justice system.

The nation would suffer severely from an environment of fear and uncertainty that chills naturalization. Naturalization produces immense benefits to both naturalized citizens and the country as a whole. Not only do immigrants who naturalize obtain concrete rights that promote their assimilation into American society, but citizenship in and of itself substantially improves immigrants' lives and economic outcomes. Moreover, the country as a whole benefits when immigrants become full and equal members of society. The nation has a great deal to lose from discouraging naturalization by severely punishing citizens based on trivial misstatements and omissions made while seeking citizenship.

For these reasons, amici respectfully urge the Court to reverse the Sixth Circuit's decision and side with the First, Fourth, Seventh, and Ninth Circuits in holding that Sections 1425(a) and 1015(a) are violated *only* when an individual procures naturalization by a *material* false statement.

ARGUMENT

I. THE POTENTIAL FOR WIDESPREAD DENATURALIZATION AND PROSECUTION FOR IMMATERIAL MISSTATEMENTS AND OMISSIONS IS REAL AND SUBSTANTIAL.

The naturalization process provides numerous opportunities for misstatements and omissions. Not only are the pitfalls apparent on the face of the application, but the experiences of many amici in assisting naturalization applicants highlight just how easy it is to make misstatements that, under the Sixth Circuit's ruling below, would place many citizens at risk of denaturalization and criminal prosecution.

A. The Naturalization Application Is Rife With Potential For Immaterial Misstatements And Omissions.

If trivial misstatements and omissions in the application process can be punished with criminal prosecution and denaturalization, the naturalization application, Form N-400 Application for Naturalization, will become a minefield for naturalization applicants. Form N-400 contains up to 107 questions, many of which require detailed written answers. The application also uses ambiguous language and is accompanied by multiple pages of detailed instructions. The application can be particularly perplexing for applicants who do not speak English as their first language. *See* National Foundation for American Policy, *Reforming the Naturalization Process*, at 4 (2011) ("A prospective naturalization applicant who is proficient in English and eminently

capable of passing the citizenship examination may have difficulty with some of the language in the application and the instructions whereby deterring him or her from applying for citizenship."). Immigrants thus face numerous opportunities to make immaterial misstatements or omissions when completing their applications.

For example, the application asks for "every location where you have lived during the last five years." Form N-400 at 3. The instructions require the applicant to "include the dates for each place you have lived in a month, day, and year format (mm/dd/yyyy)." Instructions to Form N-400 at 6. The application also asks if the applicant has "**EVER** been a member of, involved in, or in any way associated with, any organization, association, fund, foundation, party, club, society, or similar group in the United States or in any other location in the world" or has "**EVER** committed, assisted in committing, or attempted to commit, a crime or offense for which you were **NOT** arrested." Form N-400 at 12, 14 (emphasis in original). These questions compel applicants to recall events spanning the entire history of their lives with perfect accuracy. They potentially require applicants to remember and record every instance in which they may have exceeded the speed limit, or consumed alcohol underage. The difficulty of answering these questions precisely can be compounded by numerous factors including advanced age, traumatic events preceding the applicant's migration to the United States, a lack of documentation for events occurring in the applicant's country of origin, and frequent moves after arriving in America. In short, Form N-400 contains an array of questions that create risk for immaterial misstatements on matters that do not implicate the applicant's "moral

character" or compliance with other requirements for naturalization. *See* 8 U.S.C. § 1427(a) (requirements for naturalization).

The difficulty of answering every question with complete accuracy is increased because many people seeking naturalization do so without the guidance of an attorney or other professional assistance, increasing the likelihood of inaccuracies and misstatements during the application process. Moreover, many individuals provide inaccurate statements based on poor advice from *notarios*—individuals who falsely represent themselves as qualified to offer paid legal advice in order to take advantage of unsuspecting, vulnerable and often desperate immigrants. *See generally* Elinor R. Jordan, *What We Know and Need to Know about Immigrant Access to Justice*, 67 S.C. L. Rev. 295, 311 (2016) (describing the "rampant" problem of unauthorized practice of immigration law in the United States). Thus, not only do naturalization applicants often lack professional assistance, but many rely on guidance from individuals who, far from acting in the applicants' interests, are conning them. The daunting naturalization process, lengthy application, and lack of legal representation make it all too easy for honest, law-abiding applicants to knowingly include immaterial misstatements in their applications.[2]

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2. Under the Sixth Circuit's interpretation, these misstatements could be made "knowingly" regardless of the applicant's intention. The modifier "knowingly" means simply that an individual must be conscious of the nature of an alleged misstatement or omission. The inclusion of "knowingly" in the statute does not require the government to prove that the individual intended to violate the law or unlawfully obtain citizenship. *See, e.g.*, Brief for Petitioner at 11 (filed Feb. 27, 2017).

B. *Amici* Have Seen Firsthand The Potential For Immaterial Misstatements And Omissions In Naturalization Applications.

Amici that work directly with naturalization applicants have seen firsthand the pitfalls of the naturalization application process. In addition to the extraordinarily broad Form N-400 questions highlighted above, the experience of many amici in assisting naturalization applicants shows that even seemingly straightforward questions are often perilous in ways that may not be apparent at first blush.

For instance, Form N-400 asks if applicants have been married to two people at the same time. Form N-400 at 15. In many amici's experience, applicants often answer "No" despite having previously married someone in their home country from whom they have been estranged for years but never divorced before remarrying. Several amici have also assisted applicants who failed to identify children born out of wedlock because they were ashamed about their infidelity, or failed to identify children living out of the country because they wrongly believed they only needed to name children in the United States. Applicants also sometimes inaccurately report dates of foreign travel on their Form N-400. For example, applicants living near the Mexican border frequently make day-trips to Mexico for shopping or to visit family, and fail to report the trips or only give approximate dates rather than verifying the precise dates of travel.

The application also asks whether the applicant has ever "been convicted of a crime or offense," *id.* at 14, a question that can often perplex applicants who have

been convicted of crimes but later had them expunged. Form N-400 also asks whether the applicant has ever "claimed to be a U.S. citizen" or "registered to vote in any Federal, state, or local election in the United States." *Id.* at 11. With states beginning to implement automatic voter registration (AVR)—six states and the District of Columbia have approved AVR, and many others have introduced bills to add AVR—noncitizens could be at risk of being erroneously registered to vote automatically. *See, e.g., Taylor Dobbs, State In The Process Of Fixing Error That Caused Ineligible Voters To Be Registered,* Vermont's NPR News Source, Feb. 3, 2017 ("Problems with the implementation of Vermont's automatic voter registration system led to some Vermont residents who are not eligible to vote being added to the state's voter rolls . . . .") *available at* http://digital.vpr.net/post/state-process-fixing-error-caused-ineligible-voters-be-registered#stream/0. A noncitizen who was automatically registered to vote—even if only temporarily—could fail to appreciate that he or she must answer this question affirmatively.

Under the Sixth Circuit's holding, misstatements and omissions of this nature, while having no direct bearing on the applicants' eligibility for citizenship, could be grounds for denaturalization and prosecution years after the applicant has gained citizenship.

II. THE SIXTH CIRCUIT'S RULING WOULD RELEGATE NATURALIZED CITIZENS TO SECOND-CLASS CITIZENSHIP.

The Sixth Circuit's ruling would create two vastly unequal classes of citizenship. Naturalized citizens,

unlike citizens born here, would face uncertainty about their place in this country knowing that government officials had the power to strip their citizenship over minor, technical inaccuracies in their applications. Untold numbers of naturalized citizens would be at risk of losing citizenship. This fear would undermine the greatest value of naturalization: creating a permanent sense of belonging in this country. In response to this fear, naturalized citizens could retreat from civic and social life, and immigrants that are already reluctant to naturalize would be further discouraged from seeking citizenship. This second-class citizenship would be stark in the criminal justice system, where naturalized citizens would face a range of inequities. Consigning naturalized immigrants to second-class citizenship would contravene core constitutional values holding that naturalized citizens are full and equal members of society.

A. The Sixth Circuit's Ruling Could Lead To Widespread Denaturalization And Cause Immigrants To Retreat From Civic Life.

The Sixth Circuit's interpretation could subject many already-naturalized citizens to prosecution and denaturalization. In response to the threat of denaturalization, many naturalized citizens could retreat from civic and social participation.

Each year, hundreds of thousands of immigrants become naturalized American citizens—in fiscal year 2016, 752,772 naturalizations were approved. *See Number of N-400 Applications for Naturalization by Category of Naturalization, Case Status, and USCIS Field Office Location* (2016), *available at* https://www.uscis.gov/

tools/reports-studies/immigration-forms-data/data-set-form-n-400-application-naturalization. As of 2014, there were approximately 20 million naturalized citizens in the United States. Jie Zong and Jeanne Batalova, *Naturalization Trends in the United States*, Migration Policy Institute (Aug. 10, 2016), *available at* http://www.migrationpolicy.org/article/naturalization-trends-united-states. Considering the sheer number of naturalized citizens and the complexity of the naturalization form and other immigration status applications, thousands of applications, or more, might contain some minor inaccuracy or misstatement. Affirming the Sixth Circuit's ruling would thus potentially subject many U.S. citizens to criminal prosecution and denaturalization.

This threat could lead naturalized citizens to retreat from civic and social life. Criminal prosecution for an immaterial misstatement or omission could lead to deportation from the United States. *See* 8 U.S.C. § 1451(e). When immigrants fear deportation, they are less likely to report crime. *See* Leslye E. Orloff, Mary Ann Dutton, Giselle Aguilar Hass, Nawal Ammar, *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA Women's L.J. 43, 68 (2003) (explaining that battered immigrants are more likely to call police for help with domestic violence if they have "stable permanent immigration status"); *Study: Latinos Fear Reporting Crimes Because of Deportation Push*, United Press International (May 7, 2013). As a number of U.S. mayors noted in a 2015 letter to Congress: "When immigrant residents can report crime without fear of deportation, immigrants are more willing to engage with local police and government institutions, our streets and neighborhoods are safer, and those who commit crime are

more likely to be brought to justice." Mike Lillis, *Mayors Press Congress to Oppose Sanctuary City Bills*, The Hill, July 22, 2015. Fear of deportation also forces immigrants to "disengage from social and economic institutions of power for fear of being discovered." Andrew Tae-Hyun Kim, *Immigrant Passing*, 105 Ky. L.J. 95, 106 (2017); *see also* Arelis R. Hernández and Patricia Sullivan, *'It's fear, fear, fear': As enforcement increases, more immigrants avoid public places*, Wash. Post, Feb. 26, 2017 (describing how the fear of deportation in "immigrant-rich suburbs" of Washington, D.C. has quickly led immigrants to retreat from society, including "adults [...] skipping English classes" and "keeping children home from school" and dwindling business "at markets and shops in immigrant neighborhoods"). By chilling voluntary interactions with law enforcement and other civic engagement, the threat of denaturalization and deportation for immaterial misstatements and omissions could damage the social fabric of immigrant-rich communities.

B. Devaluing Naturalized Citizenship Would Further Depress Naturalization Rates.

If immaterial misstatements during the naturalization process are punishable with denaturalization and criminal sanctions, communities that already naturalize at very low rates will be further discouraged from seeking citizenship. Despite the myriad economic and civic benefits of naturalization, millions of eligible immigrants have yet to naturalize. As of 2016, 8.5 million adults in the United States were eligible to naturalize but had not done so. *See* Manuel Pastor and Jared Sanchez, *Promoting Citizenship: Assessing the Impacts of the Partial Fee Waiver* at 1 (May 2016). Indeed, less than *ten percent* of

those eligible to naturalize become citizens. *See* María E. Enchautegui and Linda Giannarelli, *The Economic Impact of Naturalization on Immigrants and Cities, Executive Summary* at IV (Dec. 2015). Almost 70% of the individuals who could naturalize but have not naturalized became eligible for citizenship more than 15 years ago. National Immigration Forum, *The Road to Naturalization: Addressing the Barriers to U.S. Citizenship* at 1. The naturalization rate in the United States lags behind many European countries and far behind Australia and Canada. Mary C. Waters and Marisa Gerstein Pineau, National Academics of Science, Engineering and Medicine, *The Integration of Immigrants into American Society*, Summary at 10-11 (2015).

These statistics reflect the many obstacles to naturalization that immigrants face, including high costs, language barriers, a complex application process, and insufficient civic infrastructure. Pastor and Sanchez, *Promoting Citizenship* at 1. Given the already low rate of naturalization in the United States, a law subjecting naturalized citizens to an increased threat of criminal prosecution and denaturalization for immaterial mistakes and omissions in the application process will only serve to further devalue naturalized citizenship and chill naturalization rates.

C. The Sixth Circuit's Ruling Would Acutely Harm Naturalized Citizens In The Criminal Justice System.

The inequities between natural-born and naturalized citizens under the Sixth Circuit's ruling would be particularly evident in the criminal justice system.

First, criminal prosecution and denaturalization are disproportionate, unfair punishments for immaterial false statements. Proportionality is an established constitutional constraint on criminal punishments. *Solem v. Helm*, 463 U.S. 277, 286 (1983); *Weems v. United States*, 217 U.S. 349, 367 (1910) (It is "a precept of justice that punishment for crime should be graduated and proportioned to offense."). The Eighth Amendment's proportionality principle "does not require strict proportionality between crime and sentence" but forbids extreme sentences that are "grossly disproportionate" to the crime. *Harmelin v. Michigan*, 501 U.S. 957, 997, 1001 (1991).

In light of these constitutional values, denaturalization is an overly harsh punishment for innocuous falsities. "To take away a man's citizenship deprives him of a right no less precious than life or liberty." *Klapprott v. United States*, 335 U.S. 601, 616 (1949) (Rutledge, J., concurring in result). American citizenship "is a precious right" and "[s]evere consequences may attend its loss, aggravated when the person has enjoyed his citizenship for many years." *Costello v. United States*, 365 U.S. 265, 269 (1961). Denaturalization is "more serious than a taking of one's property, or the imposition of a fine or other penalty," *Schneiderman v. United States*, 320 U.S. 118, 122 (1943), and thus "naturalization decrees should not be lightly set aside," *Costello*, 365 U.S. at 269. Denaturalization cannot, under established constitutional principles, be a penalty for a mistake as minimal as making an immaterial false statement in applying for immigrant status or citizenship.

Second, the Sixth Circuit's holding would incentivize the government to pursue denaturalization in criminal rather than civil cases. Civil claims under 8 U.S.C. § 1451

would require proving that the false statement was material while criminal charges under Section 1425(a) would not. Thus in cases involving false statements in naturalization proceedings where materiality is uncertain, the government would have a perverse incentive to bring denaturalization proceedings as criminal rather than civil cases. These prosecutions would subject defendants to harsher punishments—including imprisonment for 10 to 25 years—all for statements that might not merit penalties under the civil statute.

Third, given the ease of finding an immaterial misstatement in a naturalization application, prosecutors would have significantly more leverage over naturalized citizens than natural-born citizens. A prosecutor bringing charges against a naturalized citizen could review the defendant's naturalization application and other immigration files, find a potential misstatement, and add a charge under Section 1425(a). The prosecutor would then have immense leverage to extract guilty pleas to other charges in exchange for dropping the Section 1425(a) charge and preserving the defendant's citizenship.

Although criminal denaturalization is currently rare, the prosecutorial discretion permitted by the Sixth Circuit's construction has the potential to affect millions of American citizens. Under the Sixth Circuit's rule, this discretion could quickly lead to increased efforts to investigate, prosecute, and denaturalize significant numbers of American citizens, subjecting immigrant communities to fear and uncertainty.

D. Dual-Class Citizenship Would Contravene Core National Values.

The Sixth Circuit's decision threatens to create a two-class system of citizenship that is irreconcilable with the concept of equality in which our national ideals are grounded. "Citizenship obtained through naturalization is not a second-class citizenship." *Knauer v. United States*, 328 U.S. 654, 658 (1946). As Justice Harlan observed in his dissent in *Plessy v. Ferguson*, "[o]ur Constitution . . . neither knows nor tolerates classes among citizens." 163 U.S. 537, 559 (1896) (dissenting opinion). "[T]he rights of citizenship of the native born and of the naturalized person are of the same dignity and are coextensive. The only difference drawn by the Constitution is that only the 'natural born' citizen is eligible to be President." *Schneider v. Rusk*, 377 U.S. 163, 165 (1964); *see also id.* at 168 (Fifth Amendment's Due Process Clause prohibited law permitting denaturalization of citizen for continuously living in their country of origin, a form of "discrimination aimed at naturalized citizens" that "create[d] ... a second-class citizenship" and thus was "so unjustifiable as to be violative of due process") (internal quotations omitted).

But the Sixth Circuit's ruling would unavoidably relegate naturalized citizens to a second class. The citizenship of naturalized Americans would be precarious due to the threat of a random inspection of their application papers years after they have become citizens, while natural-born Americans would enjoy citizenship rights that are secure and inalienable. Naturalized citizens would face inequities in the criminal justice system that would not befall natural-born citizens. This class distinction between American citizens violates fundamental principles of equality that define American citizenship.

III. THE SIXTH CIRCUIT'S HOLDING WOULD JEOPARDIZE THE BENEFITS IMMIGRANTS AND THE COUNTRY REAP FROM NATURALIZATION.

Finally, the Sixth Circuit's holding would undermine the substantial benefits of naturalization to both naturalized citizens and the nation. Naturalization is integral to our nation's character and provides concrete benefits to both naturalized citizens and the country as a whole. For this reason, national policy has long valued naturalization in light of the principles that "all persons are created equal" and that the law should "allow persons of all backgrounds, whether native or foreign-born, to have an equal stake in the future of the United States." *USCIS Policy Manual,* Vol. 12, Ch. 1, *available at* https://www.uscis.gov/policymanual/Print/PolicyManual.html.

Naturalization greatly improves the lives of immigrants. Citizenship confers concrete legal and civic rights, including the right to vote and serve on juries, the ability to obtain and travel with a U.S. passport, and access to jobs with the federal government, the nation's largest employer. *See* U.S. Citizenship and Immigration Services, *A Guide to Naturalization* at 6 (revised Nov. 2016), *available at* https://www.uscis.gov/sites/default/files/files/article/M-476.pdf. Most of all, naturalized citizens gain a sense of stability in the United States that only citizenship can provide, as naturalized citizens are free from risk and fear of deportation while lawful permanent residents can be deported for a range of criminal convictions. Naturalized citizens can also obtain derivative citizenship for their immediate family members, which further strengthens their ties to and security in the

country. The Sixth Circuit's rule would undermine this sense of security both by imperiling the citizenship of naturalized immigrants and discouraging naturalization by immigrants eligible for citizenship.

The value of this sense of security and permanence is evident in the fact that naturalized citizens enjoy substantially better economic outcomes than noncitizen immigrants. For example, a study published in September 2012 found that "[n]aturalized citizens earn between 50 and 70 percent more than noncitizens," "have higher employment rates" than noncitizens, "and are half as likely to live below the poverty line as noncitizens." *The Economic Value of Citizenship for Immigrants in the United States* at 11 (Sept. 2012). On average, naturalized immigrants earn more per year than either non-citizen immigrants or U.S.-born citizens. Manuel Pastor and Justin Scoggins, *Citizen Gain: The Economic Benefits of Naturalization for Immigrants and the Economy* at 6 (Dec. 2015). Moreover, a study published in December 2015 found that naturalization alone—when isolated from other factors—increases earnings of immigrants 8.9 percent, increases their probability of homeownership by 6.3 percent, and increases overall employment 2 percentage points. *The Economic Impact of Naturalization on Immigrants and Cities,* Executive Summary at VI. For naturalized citizens, U.S. citizenship can be a transformative force in improving their lives.

Naturalization also produces substantial economic benefits for the country. For instance, a December 2012 study found that due to the significant economic contributions of naturalized citizens, if at least *half* of those eligible to naturalize did so, the annual GDP would

increase between $37 billion and $52 billion. *Citizen Gain: The Economic Benefits of Naturalization for Immigrants and the Economy* at 20. A study published in 2015 examined 21 sample cities and found that, due to the vast economic benefits of citizenship, those cities would enjoy $5.7 billion in increased earnings, more than $2 billion in additional tax revenue, and as many as 45,000 more homeowners if all of the naturalization-eligible immigrants in those cities became citizens. *The Economic Impact of Naturalization on Immigrants and Cities* at 2.

Beyond these real economic gains, citizenship also increases immigrants' civic engagement. Greater naturalization increases the size of the electorate as naturalized citizens may legally vote. Studies show that naturalized Hispanic and Asian American citizens vote at higher rates than their U.S.-born counterparts. Pew Research Center, *Immigrant naturalization applications climb, but not as much as past years* (Sept. 2016). Moreover, the United States has a long and proud tradition of service by naturalized immigrants in public office, including Elaine Chao, the Secretary of Labor under President George W. Bush and current Secretary of Transportation; former Governor of California Arnold Schwarzenegger and former Governor of Michigan Jennifer Granholm; and scores of naturalized citizens who are serving or have served as federal and state legislators and judges.

In short, it is very much in the nation's interest to encourage immigrants who are eligible for citizenship to naturalize, and to ensure that naturalized citizens are secure in their citizenship. Not only does naturalization strengthen societal bonds by integrating immigrants

as full and equal members of society, but the country enjoys real, measurable benefits from naturalization. This reality has long served as a driving force behind our national policy that values naturalized citizens and their contributions to American society. *See, e.g.*, USCIS Policy Manual, Vol. 12, Ch. 1 (explaining the policy principles undergirding naturalization policy, including that "[t]he United States has a long history of welcoming immigrants from all parts of the world" and "values the contributions of immigrants who continue to enrich this country and preserve its legacy as a land of freedom and opportunity"). These vital ideals, and the great benefits conferred by naturalized citizens upon the nation, would be imperiled if the Sixth Circuit's holding becomes the law nationwide.

CONCLUSION

The judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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APPENDIX

APPENDIX — IDENTIFICATION OF *AMICI*

African Law Center, Inc.

African Law Center (ALC) seeks to advance the civil, human, and legal rights of African immigrants and refugees living in the United States by concentrating on providing linguistically accessible and culturally appropriate legal and social support services to low-income families and those with limited English proficiency. The African Law Center engages in individual representation of immigrants, community legal education, and systemic advocacy.

American-Arab Anti-Discrimination Committee

The American-Arab Anti-Discrimination Committee (ADC) is the country's largest Arab American civil rights organization, with members from all 50 states and multiple chapters nationwide. Founded in 1980 by U.S. Senator James Abourezk, ADC is a non-partisan and secular non-profit grassroots organization. ADC has been at the forefront of protecting the Arab-American community for over thirty-five years against discrimination, racism, and stereotyping.

American Citizens for Justice/Asian American Center for Justice

American Citizens for Justice, and its office the Asian American Center for Justice (ACJ), is an IRC 501(c)(3) civil rights organization devoted to advocating for and protecting the civil rights interests of the Asian American

community, and all communities of color. ACJ was founded in 1983 following the baseball bat beating death of Vincent Chin, a 27-year old Chinese American.

Asian Americans Advancing Justice – Asian Law Caucus

Asian Americans Advancing Justice – Asian Law Caucus was founded in 1972 with a mission to promote, advance, and represent the legal and civil rights of Asian and Pacific Islanders, with a particular focus on low-income members of those communities. Advancing Justice – ALC is part of a national affiliation of Asian American civil rights groups, with offices in Los Angeles, Chicago, Atlanta and Washington DC. Advancing Justice – ALC has a long history of protecting and advocating for immigrant communities through direct legal services, impact litigation, community education, and policy work.

Asian American Advancing Justice – Atlanta

Asian Americans Advancing Justice – Atlanta is the first legal and policy center dedicated to defending democracy for Asian Americans, immigrants and refugees, in Georgia and the southeast. Through its four core program areas—civic engagement, policy advocacy, legal services, and leadership development—Advancing Justice – Atlanta works to build a stronger voice for the New American majority in the New South. As an organization that serves immigrants, it is critical to Advancing Justice – Atlanta's mission that the rights of all immigrants be protected.

Appendix

Asian Americans Advancing Justice – Chicago

Asian Americans Advancing Justice – Chicago (AAAJ-Chicago) is a nonprofit organization that works to empower the Asian American community through advocacy, education, research, and coalition building. AAAJ – Chicago fights for laws and policies that promote social, economic, and political equity for the Asian American community as a whole.

Asian Americans Advancing Justice – Los Angeles

Asian Americans Advancing Justice – LA's mission is to advocate for civil rights, provide legal services and education, and build coalitions to positively influence and impact Asian Americans, Native Hawaiians, and Pacific Islanders and to create a more equitable and harmonious society.

Asian American Bar Association of Greater Chicago

The Asian American Bar Association of Greater Chicago is a professional bar association serving the interests of thousands of Asian American legal professionals and community members. Our mission includes promoting the professional growth of our members; mentoring law students and new lawyers; providing services to the community; and offering policy recommendations on legal, social, political, and economic interests significant to our community. Protecting the rights and interests of naturalized citizens goes to the very core of our mission.

Appendix

Asian American Bar Association of San Francisco Bay Area

Asian American Bar Association of San Francisco Bay Area (AABA) is one of the largest Asian American bar associations in the nation and one of the largest minority bar associations in the State of California. From its inception in 1976, AABA and its attorneys have been actively involved in civil rights issues and community service. AABA stands firmly with amici and their community members, many of whom are naturalized citizens, in the belief that naturalized citizens are essential to the fabric of American society. It would be fundamentally unfair and un-American to penalize people with denaturalization and deportation for minor misstatements.

Asian American Community Services

Asian American Community Services (AACS) is a community-based organization in Central Ohio that seeks to improve the well-being and quality of life of Asian/Pacific Islanders through a broad range of social services, education, and community outreach. Every day, we work to address the various social, linguistic, cultural, and other barriers faced by our clients who consist largely of immigrants and children/grandchildren of immigrants including many naturalized citizens. We understand the critical need to ensure that the civil rights of all immigrants are respected.

Appendix

Asian American Lawyers Association of Massachusetts

Since its inception in 1984, the Asian American Lawyers Association of Massachusetts (AALAM) has devoted its energy and resources to serving the Asian American legal community and improving and facilitating the administration of law and justice. AALAM serves as a professional and social network for its over 250 members who include lawyers, judges, law professors, and law students.

Asian Americans United

Since 1985, Asian Americans United has existed so that people of Asian ancestry in Philadelphia exercise leadership to build their communities and unite to challenge oppression.

Asian and Pacific Islanders American Vote

Asian and Pacific Islanders American Vote (APIAVote) is a national nonpartisan organization that works with partners to mobilize Asian Americans and Pacific Islanders (AAPIs) in electoral and civic participation. In addition to engaging, educating and mobilizing AAPI voters, ensuring access to the ballot is a critical component to APIAVote's vision of a world that is inclusive, fair, and collaborative, and where AAPI communities are self-determined, empowered, and engaged.

Appendix

Asian Law Alliance

The Asian Law Alliance (ALA), founded in 1977, is a non-profit public interest legal organization with the mission of providing equal access to the justice system to the Asian and Pacific Islander communities in Santa Clara County, California.

Asian Pacific American Labor Alliance, AFL-CIO (APALA)

Asian Pacific American Labor Alliance, AFL-CIO (APALA) is the first and only national organization of AAPI union members and allies to advance worker, immigrant, and civil rights. Backed by the AFLCIO, APALA has 18 chapters and a national office in Washington, D.C. Since its founding in 1992, APALA has played a unique role in serving as the bridge between the broader labor movement and the AAPI community.

Asian Pacific American Legal Resource Center

Asian Pacific American Legal Resource Center is a legal services organization that assists low-income Asian Pacific Islander legal permanent residents through the naturalization process.

Asian Services in Action

Asian Services in Action (ASIA) Inc. provides essential social services, community advocacy, and legal assistance for foreign born clients including preparation and filing of hundreds of citizenship applications yearly.

Appendix

AZAPIAVote Table

AZAPIAVote Table is a non-profit, nonpartisan voting advocacy organization dedicated to the advancement of Asian and Pacific Islander Americans socially, politically and economically through voting participation.

Center for Constitutional Rights

The Center for Constitutional Rights (CCR) is a national non-profit legal and educational organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and international human rights law. Founded in 1966, CCR has a long history of litigating cases on behalf of those with the fewest protections and least access to legal resources, including numerous landmark civil and human rights cases fighting for racial and immigrant justice. CCR's recent work on behalf of immigrant communities includes challenges to abusive immigration detention practices and warrantless home raids as well as lawsuits seeking information about federal immigration practices under the Freedom of Information Act.

Chicago Lawyers' Committee for Civil Rights

We are civil rights lawyers and advocates working to secure racial equity and economic opportunity for all. We provide legal representation through partnerships with the private bar, and collaborate with grassroots organizations and other advocacy groups to implement community-based solutions that advance civil rights. Our vision is

to root out and dismantle deeply entrenched systems of discrimination, racism, and economic oppression. We believe in the power of the law to uplift and give voice to those individuals, organizations, and communities most impacted by poverty and racial disparity, including racial and ethnic groups, religious minorities, women, immigrants, LGBTQ people, and people with disabilities.

Chinese American Citizens Alliance - Portland Lodge

The Chinese American Citizens Alliance is over 100 years old with 18 lodges across the U.S. The C.A.C.A. - Portland Lodge's mission is three-fold: to develop leadership, serve the community and promote civil rights. We do this through civic education and engagement, development of youth leadership and youth basketball programs, academic scholarships and partnerships with non-profits serving the Chinese community.

Chinese for Affirmative Action

Chinese for Affirmative Action was founded in 1969 to protect the civil and political rights of Chinese Americans and to advance multiracial democracy in the United States. Today, CAA is a progressive voice in and on behalf of the broader Asian and Pacific American community. We advocate for systemic change that protects immigrant rights, promotes language justice, and remedies racial injustice.

Appendix

Chinese Community Center in Houston

The Chinese Community Center is the largest Asian-led social services agency in the southwest U.S. The mission of the Center is to bridge East and West by enriching families through cultural, educational, and social services.

Citizenship News

Citizenship News is a blog for citizenship educators that keeps them abreast of developments and resources that may be helpful to them.

Connecticut Asian Pacific American Bar Association

The Connecticut Asian Pacific American Bar Association is a legal organization comprised of Asian Pacific American lawyers, judges and law students, as well as others interested in Asian Pacific American issues.

Council on American-Islamic Relations

The Council on American-Islamic Relations (CAIR) is the largest American Muslim civil liberties nonprofit organization in the nation. CAIR's mission is to enhance understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding. CAIR is a leading expert on issues of importance to the American Muslim community, including issues of civil and immigrants' rights. The organization is headquartered in Washington, D.C. and has 30 chapters in 22 states across the nation.

Appendix

Demos

Demos is a public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy. Demos engages in litigation, research, and advocacy to further its mission of ensuring that we have an inclusive democracy where all voices can be heard.

Filipino Bar Association of Northern California

The Filipino Bar Association of Northern California (FBANC) is one of the oldest Filipino-American bar associations in the nation with a mission to advance equality and guard against injustices targeting not only the Filipino community, but the rights of all minority communities. As an organization comprised of Filipino-American attorneys, judges, law professors, law students and allies, FBANC stands in solidarity with immigrants' rights and civil rights groups.

Fred T. Korematsu Center for Law and Equality

The Fred T. Korematsu Center for Law and Equality is a civil rights organization whose mission is to advance the legacy of Fred Korematsu.

Georgia Association of Latino Elected Officials (GALEO)

Georgia Association of Latino Elected Officials (GALEO) is a non-partisan and nonprofit organization founded in Georgia under Section 501(c)(6) of the Internal Revenue

Code. It was established to increase representation of Latino elected and appointed officials, to proactively address issues and needs facing the Latino community, and to engage Georgia's Latino community in the democratic and political process. GALEO's mission is to increase civic engagement and leadership development of the Latino/Hispanic community across Georgia; its activities include assisting in the preparation of legal permanent residents' naturalization applications at public workshops. GALEO's membership includes Latino and non-Latino citizens and non-citizens across the state of Georgia.

HIAS and Council Migration Services, Inc. d/b/a HIAS Pennsylvania

HIAS Pennsylvania is a non-profit 501(c)(3) organization that was founded in 1882 to assist Jewish immigrants fleeing persecution from Europe. Today it provides legal and supportive services to immigrants, refugees and asylum seekers from all backgrounds in order to assure their fair treatment and full integration into American society. HIAS Pennsylvania advocates for just and inclusive public policies and practices.

Hispanic Association of Colleges and Universities

The Hispanic Association of Colleges and Universities (HACU), founded in 1986 and headquartered in San Antonio, TX, represents more than 470 colleges and universities committed to Hispanic higher education success in the U.S. and Puerto Rico. HACU's member institutions enroll two-thirds of the nation's Hispanic

college students and six million students altogether. Many students at HACU member colleges and universities are naturalized citizens or American-born children of naturalized citizens. The threat of loss of citizenship for them or for family members would be extremely disruptive to their educational pursuits.

Hispanic National Bar Association

The membership of *amicus curiae* the Hispanic National Bar Association (HNBA) comprises thousands of Latino lawyers, law professors, law students, legal professionals, state and federal judges, legislators, and bar affiliates across the country. The HNBA supports Hispanic legal professionals and is committed to advocacy on issues of importance to the 53 million people of Hispanic heritage living in the United States. The HNBA regularly participates as amicus in cases concerning immigration issues.

Illinois Coalition for Immigrant and Refugee Rights

The Illinois Coalition for Immigrant and Refugee Rights (ICIRR) is a non-profit, nonpartisan statewide organization dedicated to promoting the rights of immigrants and refugees to full and equal participation in the civic, cultural, social, and political life of our diverse society. In partnership with its member organizations, ICIRR educates and organizes immigrant and refugee communities to assert their rights; promotes citizenship and civic participation; monitors, analyzes, and advocates on immigrant-related issues; and informs the general

public about the contributions of immigrants and refugees. ICIRR promotes naturalization among eligible legal immigrants and administers the New Americans Initiative, a partnership with the State of Illinois to assist immigrants with their naturalization applications.

Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities. The New Americans Campaign, led by the ILRC, is a non-partisan innovative and unprecedented effort that brings together a coalition of funders, leading national immigration and service organizations, and over one hundred local service providers across 18 different cities to help aspiring Americans reach their dream of citizenship.

Japanese American Bar Association

The Japanese American Bar Association has a special interest in protecting the immigration rights and statuses of visa holders and citizens as 75 years ago, many of the 120,000 people who were interned during WWII were American citizens.

Appendix

Just Foreign Policy

Just Foreign Policy works for reform of U.S. foreign policy, including U.S. compliance with international agreements on refugees and migration.

League of United Latin American Citizens

LULAC is the largest and oldest Hispanic organization in the United States. The mission of the League of United Latin American Citizens is to advance the economic condition, educational attainment, political influence, housing, health and civil rights of the Hispanic population of the United States.

League of Women Voters of the United States

The League of Women Voters of the United States (the League) is a nonpartisan, community-based organization that encourages the informed and active participation of citizens in government and influences public policy through education and advocacy. Founded in 1920 as an outgrowth of the struggle to win voting rights for women, the League is organized in over 700 communities and in every state, with more than 150,000 members and supporters nationwide. The League of Women Voters was founded upon the belief that our democracy is enhanced by a diversity of voices. Immigrants have helped weave the fabric and identity of our nation. All persons should receive fair treatment under the law.

Appendix

Legal Aid at Work

Legal Aid at Work (LAAW) is a nonprofit public interest law firm, based in San Francisco, whose mission is to protect and expand the employment rights of underrepresented worker communities through impact litigation, direct legal services, and policy and legislative advocacy. LAAW's National Origin and Immigrants' Rights Project focuses on representing national origin minority and immigrant workers who face discrimination and other forms of workplace exploitation.

Make the Road New York

With over 20,000 members across Brooklyn, Queens, Staten Island and Long Island, Make the Road New York builds the power of Latino and working class communities to achieve dignity and justice through organizing, policy innovation, transformative education, and legal and survival services.

Michigan Immigrant Rights Center

The Michigan Immigrant Rights Center (MIRC) is a statewide resource for Michigan's immigrants and immigration advocates.

Muslim Public Affairs Council

Muslim Public Affairs Council (MPAC) improves understanding and policies that affect American Muslims.

Appendix

National Asian Pacific American Bar Association

The National Asian Pacific American Bar Association (NAPABA) is the national association of Asian Pacific American attorneys, judges, law professors, and law students, representing the interests of over 75 state and local Asian Pacific American bar associations and nearly 50,000 attorneys who work in solo practices, large firms, corporations, legal services organizations, nonprofit organizations, law schools, and government agencies. Since its inception in 1988, NAPABA has served as the national voice for Asian Pacific Americans in the legal profession, and has promoted justice, equity, and opportunity for Asian Pacific Americans. NAPABA advocates for the rights of immigrants and fair laws that safeguard the equality of all citizens.

National Association of Social Workers

The National Association of Social Workers (NASW) is the largest membership organization of professional social workers in the world, with 130,000 members in 55 chapters. NASW works to enhance the professional growth and development of its members, create and maintain professional standards, and advance sound social policies. In alignment with its mission, NASW establishes professional standards, resources, and policies to support quality social work practices.

National Bar Association

The National Bar Association (NBA) is the largest and oldest association of predominantly African-American attorneys and judges in the United States. The NBA was founded in 1925 when there were only 1,000 African-American attorneys in the entire country and when other national bar associations, such as the American Bar Association, did not admit African-American attorneys. Throughout its history, the NBA consistently has advocated on behalf of African Americans and other minority populations regarding issues affecting the legal profession. The NBA represents approximately 66,000 lawyers, judges, law professors, and law students, and it has over eighty affiliate chapters throughout the world.

National Council of Asian Pacific Americans (NCAPA)

The National Council of Asian Pacific Americans (NCAPA) is a coalition of 34 national Asian Pacific American organizations around the country. Based in Washington, D.C., NCAPA serves to represent the interests of the greater Asian American (AA) and Native Hawaiian Pacific Islander (NHPI) communities and to provide a national voice for the communities' concerns.

National Council of Jewish Women

The National Council of Jewish Women (NCJW) is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the

quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Resolutions state that NCJW resolves to work for "[c]omprehensive, humane, and equitable immigration, refugee, asylum, and naturalization laws, policies, and practices that facilitate and expedite legal status and a path to citizenship for more individuals."

The National Employment Law Project

The National Employment Law Project (NELP) is a non-profit legal and research organization that has for more than 45 years advocated for the employment and labor rights of low-wage, unemployed, and immigrant workers. NELP seeks to ensure that all workers, and especially the most vulnerable ones, receive the full protection of labor laws, and that employers are not rewarded for skirting those basic rights. NELP's areas of expertise include the workplace rights of immigrants, and NELP has testified in Congress regarding these matters, and has litigated directly and participated as amicus in numerous cases before Circuits and the U.S. Supreme Court.

National Federation of Filipino American Associations (NaFFAA)

The National Federation of Filipino American Associations (NaFFAA) is a non-profit, non-partisan organization. Established in 1997, NaFFAA has been the standard bearer for promoting the welfare and well-being of the 4 million Filipinos and Filipino Americans throughout the United States. NaFFAA is the largest national affiliation

of Filipino American institutions, umbrella organizations, and individuals. Its thirteen member regions cover the continental United States, Alaska, Hawaii, and the Pacific Islands. NaFFAA's vision is to serve as the voice of all Filipinos and Filipino Americans by uniting, engaging, and empowering diverse individuals and community organizations around three key areas: leadership development, civic engagement, and national advocacy.

National Filipino American Lawyers Association

The National Filipino American Lawyers Association (NFALA) is a national association of Filipino-American attorneys, judges, law professors, and law students dedicated to promoting the professional development, interests, and success of Filipino-American legal professionals nationwide. NFALA represents over 1,000 attorneys and various state and local Filipino-American bar associations. NFALA is the voice for the national Filipino-American legal community and strives to fight for equal opportunity and the rights of underserved minority groups.

National Immigration Forum

Founded in 1982, the National Immigration Forum (Forum) advocates for the value of immigrants and immigration to the nation. The Forum promotes naturalization because it develops a diverse citizenry fully invested in and contributing to all aspects of civic and economic life in the U.S. Our New American Workforce program works with businesses across the nation to assist

their eligible immigrant employees with the citizenship process through a two-step process that targets legal permanent residents at their workplaces. We are also a National Partner in The New Americans Campaign, a nonpartisan national network of legal-service providers, faith-based organizations, businesses, foundations and community leaders promoting citizenship and addressing barriers to naturalization.

National Iranian American Council

The National Iranian American Council is a nonpartisan, nonprofit organization dedicated to strengthening the voice of Iranian Americans and promoting greater understanding between the American and Iranian people.

National Justice for Our Neighbors

NJFON supports a national network of immigration legal service organizations affiliated with the United Methodist Church. In addition to conducting direct legal services for low-income immigrants, our network advocates for access to justice and policies that uphold the dignity of our immigrant brothers and sisters.

National Korean American Service & Education Consortium (NAKASEC)

NAKASEC's mission is to organize Korean and Asian American communities to achieve social, economic, and racial justice. Its main issue areas include immigrant rights, immigration reform, civic engagement, and immigrant youth/adult/senior leadership development.

Appendix

National Organization for Women Foundation

The National Organization for Women (NOW) Foundation is a 501(c)(3) entity affiliated with the National Organization for Women, the largest grassroots feminist activist organization in the United States with chapters in every state and the District of Columbia. NOW Foundation is an education and litigation organization committed to advancing equal rights for women and ensuring that all women are treated fairly and equally under the law. NOW Foundation works to advance the rights of immigrant women and is concerned about the harmful effects on women and their families of unwarranted prosecution and denaturalization as result of immaterial misstatements made during the naturalization process. Our country is well served when we welcome immigrants who make a sustained positive contribution to their communities, and overzealous enforcement policies will cause us to lose those benefits.

The New York Immigration Coalition

The New York Immigration Coalition (NYIC) is an umbrella policy and advocacy organization for nearly 200 groups in New York State. Our mission is to unite immigrants, members, and allies so all New Yorkers can thrive. We represent the collective interests of New York's diverse immigrant communities and organizations and devise solutions to advance them; advocate for laws, policies, and programs that lead to justice and opportunity for all immigrant groups; and build the power of immigrants and the organizations that serve them to

ensure their sustainability, to improve people's lives, and to strengthen our state. We work hard to promote access to US citizenship for all eligible New Yorkers, including through our advocacy work as well as coordination of services.

North Carolina Asian Americans Together

North Carolina Asian Americans Together works to bring the Asian American and Pacific Islander community in North Carolina together through civic engagement and political participation.

OCA - Asian Pacific American Advocates

OCA - Asian Pacific American Advocates (OCA) is a national, membership-driven organization dedicated to advancing the social, political, and economic wellbeing of Asian Pacific Americans. Through its 100 chapters and affiliates across the nation, OCA engages in policy advocacy, community organizing, and programming to advance the civil rights of Asian Pacific Americans, including the protection of immigrant and refugee rights.

OCA-Asian Pacific American Advocates Greater Houston Chapter

OCA-Asian Pacific American Advocates Greater Houston Chapter is a social justice, leadership and civil rights advocacy organization of community advocates that works with the immigrant community in Houston, TX. We organize citizenship assistance forums on a monthly basis in Houston.

Appendix

OCA-Detroit

OCA-Detroit is a chapter of OCA-Asian Pacific American Advocates, a national membership-driven organization of community advocates dedicated to advancing the social, political, and economic well-being of Asian Pacific Americans (APAs) in the United States. OCA was founded as the Organization of Chinese Americans in 1973.

OCA-Greater Seattle

The Greater Seattle Chapter of OCA-Asian Pacific American Advocates was formed in 1995 and since that time it has been serving the Greater Seattle Chinese and Asian Pacific American community as well as other communities in the Pacific Northwest. It is recognized in the local community for its advocacy of civil and voting rights as well as its sponsorship of community activities and events.

Organization of Chinese Americans-New York Chapter

OCA-NY's core mission is to enhance the civil rights interests of the Asian, Asian American and Pacific Islander community in the United States. We believe the Sixth Circuit's holding in the present case, which allows immaterial statements made by a naturalized American citizen during his or her naturalization process to be used by the United States government as a basis to strip his or her citizenship, to be inapposite to the ideals and principles of our Constitution.

OneAmerica

OneAmerica is Washington State's largest immigrant and refugee advocacy organization. OneAmerica also manages the Washington New Americans program (WNA), which provides free legal assistant on naturalization applications for eligible individuals throughout Washington State.

Project Vote

Project Vote, Inc. is a national nonpartisan, non-profit 501(c)(3) based in Washington, DC whose mission is to build an electorate that accurately represents the diversity of America's citizenry. Through its research, advocacy, technical assistance, and direct legal services, Project Vote works to ensure that every eligible citizen is able to register, vote, and cast a ballot that counts. There are issues similar to those in the present case that come up in the context of voter registration, where individuals lose their rights or face potential harm as a result of immaterial misstatements or inadvertent errors. We have a strong interest in ensuring that the government cannot wield unchecked power to deprive individuals of their rights solely on the basis of such immaterial mistakes.

South Asian Americans Leading Together (SAALT)

SAALT is a national, non-partisan, non-profit organization that fights for racial justice and advocates for the civil rights of all South Asians in the United States. Our ultimate vision is dignity and full inclusion for all.

Appendix

South Asian Bar Association of Southern California

The South Asian Bar Association of Southern California (SABA-SC) is dedicated to the advancement and development of South Asian attorneys as well as attorneys interested in issues affecting the South Asian community.

Southeast Asia Resource Action Center (SEARAC)

The Southeast Asia Resource Action Center (SEARAC) is a national organization that empowers Cambodian, Laotian, and Vietnamese American communities who came to this country as the largest group of refugees ever resettled in the U.S. Due to outdated immigration laws passed in 1996 expanding deportable offenses for green card holders, almost 16,000 community members have received final orders of deportation since 1998. Acquiring citizenship is the best line of defense for our communities to fight deportation, but access to information and financial and cultural barriers makes the process daunting. SEARAC rejects efforts to strip naturalized citizens of citizenship on the basis of irrelevant misstatements made during the naturalization process, the fear of which would likely discourage many eligible green card holders from acquiring citizenship.

Southeast Asian Coalition

The Southeast Asian Coalition (SEAC) is a grassroots non-profit organization based in Charlotte, North Carolina. SEAC is a member of the New Americans Campaign and seeks to serve the Southeast Asian American refugee

community, build community empowerment, as well as add to the collective fight for justice for all communities in North Carolina through youth organizing, base-building and civic engagement, and advocacy programs.

Southern Poverty Law Center

The Southern Poverty Law Center (SPLC) has provided pro bono civil rights representation to low income persons in the Southeast since 1971, with a particular focus on combating unlawful discrimination. SPLC has litigated numerous cases to enforce the civil rights of immigrants, including cases to defend against state efforts to obstruct refugee resettlement.

Thai Community Development Center

Thai Community Development Center (Thai CDC) is a non-profit organization founded in 1994 to provide programs and services to low-income Thai immigrants. Since its establishment, Thai CDC has addressed the multifaceted needs of Thai immigrants in the Southern California region, who, at an estimated population of 100,000, are considered the largest number of Thais living abroad. Thai CDC offers a broad range of social and human services and also engages in extensive education and advocacy efforts, including providing legal clinics and advocating for a humane immigration policy.

Appendix

T'ruah: The Rabbinic Call for Human Rights

T'ruah: The Rabbinic Call for Human Rights brings together more than 1800 rabbis and cantors from all streams of Judaism, together with all members of the Jewish community, to act on the Jewish imperative to respect and advance the human rights of all people.

RECORD AND BRIEF

No. 16-309

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In The
Supreme Court of the United States

DIVNA MASLENJAK,

Petitioner,

v.

UNITED STATES,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF *AMICI CURIAE* FOR IMMIGRANT DEFENSE PROJECT, IMMIGRANT LEGAL RESOURCE CENTER, NATIONAL IMMIGRANT JUSTICE CENTER, NATIONAL IMMIGRATION LAW CENTER, NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS' GUILD IN SUPPORT OF PETITIONER

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CASES

Bond v. United States, 134 S.Ct. 2077 (2014) 8

Bordenkircher v. Hayes, 434 U.S. 357 (1978) 8, 9

Costello v. United States, 365 U.S. 265 (1961) 4, 6

Flores-Figueroa v. United States, 556 U.S. 646 (2009).....9

Kungys v. United States, 485 U.S. 759 (1988) ....*passim*

Stenberg v. Carhart, 530 U.S. 914 (2000).....8

United States v. Chahla, 752 F.3d 939 (11th Cir. 2014).....7

United States v. Chemical Foundation, Inc., 272 U.S. 1 (1926) 8

United States v. Maslenjak, 821 F.3d 675 (6th Cir. 2016)..... 20, 21, 25, 26, 28

United States v. Mensah, 737 F.3d 789 (1st Cir. 2013).....7

United States v. Puerta, 982 F.2d 1297 (9th Cir. 1992).....25

Wayte v. United States, 470 U.S. 598 (1985).....8

Weems v. United States, 217 U.S. 349 (1910) 6

Young v. U.S. ex rel. Vuitton et Fils S.A., 481 U.S. 787 (1987).....9

TABLE OF AUTHORITIES – Continued

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STATUTES & REGULATIONS

8 U.S.C. § 1325(c) 7

8 U.S.C. § 1451(a) ..... *passim*

8 U.S.C. § 1451(e) ..... *passim*

18 U.S.C. § 1015(a) 26, 27

18 U.S.C. § 1425(a) ..... *passim*

18 U.S.C. § 3282(a) 7

18 U.S.C. § 3291 7

8 C.F.R. § 1316.10(a)(1) 10

8 C.F.R. § 1316.10(a)(2) 10

OTHER AUTHORITIES

Brian D. Silver, Barbara A. Anderson & Paul R. Abramson, *Who Overreports Voting?* 80 Am. Pol. Sci. Rev. 613 (1986) 12

C. Kirk Hadaway, Penny Long Marler, and Mark Chaves, *What the Polls Don't Show: A Closer Look at US Church Attendance*, 58 Am. Soc. Rev. 741 (1993) 12

Erving Goffman, The Presentation of Self in Everyday Life (Anchor/Doubleday 1959) 12

Mark R. Leary, Self-presentation: Impression Management and Inter-personal Behavior (Westview Press 1995) 12

TABLE OF AUTHORITIES – Continued

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N-400, Application for Naturalization, https://www.uscis.gov/n-400 (last visited Feb. 28, 2017) 10, 11, 17

Naturalization Fact Sheet, United States Citizenship and Immigration Services, https://www.uscis.gov/news/fact-sheets/naturalization-fact-sheet (last visited Feb. 28, 2017) 7

Peter Moyers, *Butchering Statutes: The Postville Raid and the Misinterpretation of Federal Law*, 32 Seattle U. L. Rev. 651 (2009) 9

The New Americans Campaign: Calendar of Naturalization Assistance Events, http://newamericanscampaign.org/events (last visited Feb. 28, 2017) 11

Transactional Records Access Clearinghouse, Criminal Prosecutions for Illegal Entry Up, Re-Entry Down (as of May 2016), http://trac.syr.edu/immigration/reports/430/ (last visited Feb. 28, 2017) 9

INTEREST OF *AMICI CURIAE*[1]

Amici are legal organizations that provide specialized assistance to lawyers and immigrants on issues that include naturalization and the intersection of immigration and criminal laws. *Amici* are deeply concerned that the standard proposed by the government would place naturalized citizens and their families at risk in ways that could not possibly have been intended by Congress.

The Immigrant Defense Project ("IDP") is a nonprofit legal resource and training center that provides criminal defense attorneys, immigration attorneys, and immigrants with expert legal advice, publications, and training on issues involving the interplay between criminal and immigration law. IDP is dedicated to promoting fundamental fairness for immigrants accused of crimes, and therefore has a keen interest in ensuring the correct interpretation of laws that affect the rights of naturalized immigrants accused of criminal conduct relating to their applications for naturalization and consequently at risk of denaturalization. IDP has submitted *amicus curiae* briefs in many of this Court's key cases involving the interplay between criminal and immigration law. *See, e.g.*, *Mathis v. United States*, 136 S. Ct. 2243 (2016); *Luna Torres v. Lynch*, 136 S. Ct. 1619 (2016); *Mellouli v. Lynch*, 135 S. Ct. 1980 (2015);

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[1] *Amici* state that no counsel for a party authored any part of this brief, and no person or entity other than *amici* and their counsel made a monetary contribution to the preparation or submission of this brief. Both petitioner and respondent have consented to the filing of this brief pursuant to Rule 37.3(a).

Vartelas v. Holder, 566 U.S. 257 (2012); *Carachuri-Rosendo v. Holder*, 560 U.S. 563 (2010); *Padilla v. Kentucky*, 559 U.S. 356 (2010); *Lopez v. Gonzales*, 549 U.S. 47 (2006); *Leocal v. Ashcroft*, 543 U.S. 1 (2004); *INS v. St. Cyr*, 533 U.S. 289 (2001).

The Immigrant Legal Resource Center ("ILRC") trains attorneys, paralegals, and community-based advocates who work with immigrants around the country. The ILRC informs the media, elected officials, and public to shape effective and just immigration policy and law. It works with grassroots immigrant organizations to promote civic engagement and social change. Critically, the ILRC leads the New Americans Campaign, a groundbreaking, nonpartisan national network of 120 legal-service providers, faith-based organizations, businesses, foundations and community leaders that is paving a better road to citizenship by facilitating nationwide naturalization trainings, clinics, and workshops. Moreover, the ILRC is the author of one of the most comprehensive immigration law guides to naturalization, *Naturalization and U.S. Citizenship: The Essential Legal Guide* and is deeply embedded in providing technical assistance to immigration lawyers and representatives working on naturalization issues.

The National Immigrant Justice Center ("NIJC") is a Chicago-based nonprofit, accredited since 1980 by the Board of Immigration Appeals to represent individuals in immigration matters. Through its staff and network of more than 1,500 pro bono attorneys, NIJC has a long history of representing low-income immigrants seeking to naturalize, as well as advising

defense counsel regarding the effects on criminal convictions. NIJC therefore has a deep interest in the due process implications of denaturalization.

The National Immigration Law Center ("NILC") is the primary national organization in the United States exclusively dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. Over the past 35 years, NILC has won landmark legal decisions protecting fundamental rights, and advanced policies that reinforce the values of equality, opportunity, and justice. NILC has earned a national leadership reputation for its expertise in the rights of immigrants, including litigating key due process cases to protect the rights of noncitizens.

The National Immigration Project of the National Lawyers Guild ("NIPNLG") is a national nonprofit membership organization that provides legal and technical support to attorneys, legal workers, immigrant communities, and advocates seeking to advance the rights of noncitizens. For more than 30 years, the NIPNLG has provided legal training to the bar and the bench on the immigration consequences of criminal conduct. It writes *Immigration Law and Crimes*, *U.S. Citizenship and Naturalization Handbook*, and three other treatises published by Thompson-Reuters. The NIPNLG also has participated as *amicus curiae* in significant immigration-related cases before this Court in, among others: *Mathis v. United States*, 136 S. Ct. 2243 (2016); *Luna Torres v. Lynch*, 136 S. Ct. 1619 (2016); *Mellouli v. Lynch*, 135 S. Ct. 1980 (2015); *Mata v. Lynch*, 135 S. Ct. 2150 (2015); and *United States v.*

Mendoza-Lopez, 481 U.S. 828 (1987). The NIPNLG presents this brief to assist the Court in its consideration of this case because it has substantial expertise in the issue presented here.

SUMMARY OF ARGUMENT

In this case, the government seeks the power to secure a conviction under 18 U.S.C. § 1425(a), thereby subjecting a naturalized U.S. citizen to both criminal penalties and mandatory denaturalization, without being required to prove that a misrepresentation in a naturalization application was in any way material to the granting of citizenship. Stripping citizenship on the basis of a misrepresentation, no matter how minor or unrelated to the qualifications for citizenship, is a draconian result that is in tension with this Court's recognition that "naturalization decrees are not lightly to be set aside." *Costello v. United States*, 365 U.S. 265, 269 (1961) (internal quotation omitted).

The power that the government seeks must be considered in light of the vast amount of information it seeks in applications for naturalization and the high likelihood that the answers to one of the many questions on the form will not be accurate. Indeed, the sweep of the form – asking for details of personal information, associations and acts that cover the applicant's lifetime and may involve information that is private or embarrassing – makes it highly likely that the government's proposed standard would place large numbers

of naturalized citizens at risk of losing their citizenship at the hands of an aggressive prosecutorial policy. Under the government's standard, applicants who overstate their height or understate their weight would be at risk, as would be those who leave out mention of an organizational affiliation, such as involvement in an organization on one or another side of LGBTQ or abortion rights issues. Under the government's standard, these types of statements would be grounds for jailing naturalized citizens and stripping them of their citizenship, even when they are immaterial to the case and would be inadequate grounds for denying citizenship in the first place.

Read correctly, section 1425(a) does not grant such sweeping powers. First, as petitioner argues, the statute limits prosecution to those who have procured naturalization unlawfully, thereby implicitly requiring materiality in any false statement. Second, there can be no tradeoff between substantive and procedural protections of citizenship. Because the substantive standard for civil denaturalization for a false statement requires materiality, the criminal statute must require at least the same level of culpability. Finally, even if some civil denaturalizations do not require a showing of materiality, materiality must be shown in a criminal case where the parallel civil statute requires materiality. Therefore the ruling of the Sixth Circuit should be reversed.

ARGUMENT

I. The standard proposed by the government would have far reaching criminal and denaturalization consequences for naturalized citizens who made innocuous and immaterial false statements in their naturalization applications.

As this Court has long recognized, "American citizenship is a precious right," and thus "naturalization decrees are not lightly to be set aside." *Costello v. United States*, 365 U.S. 265, 269 (1961) (internal quotation omitted). Simultaneously, this Court has acknowledged the gravity of the power to designate activity criminal and worthy of imprisonment: "With power in a legislature great, if not unlimited, to give criminal character to the actions of men, with power unlimited to fix terms of imprisonment with what accompaniments they might, what more potent instrument of cruelty could be put into the hands of power?" *Weems v. United States*, 217 U.S. 349, 372-73 (1910). The criminal denaturalization statute, 18 U.S.C. § 1425(a), by combining both criminal sanctions and the stripping of citizenship, must be read with at least as much caution as statutes that levy only one of these powerful sanctions.[2]

The government's proposed standard would threaten the liberty and citizenship of countless naturalized

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[2] 18 U.S.C. § 1425(a) authorizes prison sentences of 10-25 years.

citizens. In the last decade,[3] 6.6 million individuals naturalized and were welcomed "into the fabric of our nation."[4] These 6.6 million individuals completed a highly detailed application form that is so sweeping in its inquiries that it can easily lead applicants to make innocuous false statements. Such false statements may result from an applicant's fear, shame, embarrassment, vanity, or any number of innately human characteristics. The standard proposed by the government would transform these innocuous statements into predicates for exercising the immense power of the criminal denaturalization statute. This breathtaking power in the hands of an aggressive prosecutor would

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[3] 18 U.S.C. § 1425(a) has a statute of limitations of ten years. *See* 18 U.S.C. § 3291 ("No person shall be prosecuted, tried, or punished for violation of sections 1423 to 1428 . . . unless the indictment is found or the information is instituted within ten years after the commission of the offense."). It is not uncommon for the government to charge section 1425 and not the underlying predicate where the statute of limitations on the underlying statute has run. *See, e.g.*, *United States v. Mensah*, 737 F.3d 789, 794 n.8 (1st Cir. 2013) ("Mensah was not charged with violating section 1015 because the statute of limitations had run on that offense by the time the government completed its investigation."); *see also United States v. Chahla*, 752 F.3d 939, 946 n.6 (11th Cir. 2014) ("It appears that the government charged the Chahlas under 18 U.S.C. § 1425(a) instead of the statute generally used to prosecute marriage fraud, 8 U.S.C. § 1325(c), because the statute of limitations for the latter had run. *Compare* 18 U.S.C. § 3291 (providing a ten-year statute of limitations for violations of § 1425) *with* 18 U.S.C. § 3282(a) (establishing a five-year statute of limitations for statutes, like § 1325, that do not provide otherwise).").

[4] Naturalization Fact Sheet, United States Citizenship and Immigration Services, https://www.uscis.gov/news/fact-sheets/naturalization-fact-sheet (last visited Feb. 28, 2017).

threaten the stability of countless naturalized citizens and is far beyond the sanction authorized by the statute.

A. The government's proposed standard must be examined in light of the immense power it vests in the most aggressive prosecutor.

The Attorney General and United States Attorneys retain "broad discretion" to enforce the Nation's criminal laws. *Wayte v. United States*, 470 U.S. 598, 607 (1985) (internal quotation omitted). "The presumption of regularity supports" their prosecutorial decisions and, "in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties." *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926). In the ordinary case, "so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute . . . generally rests entirely in his discretion." *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978).

The government's argument in this case must be considered in light of the power it vests in the most aggressive prosecutor. *See, e.g., Bond v. United States*, 134 S.Ct. 2077, 2090 (2014) (rejecting "boundless reading" of a statutory term given "deeply serious consequences" that reading would entail); *Stenberg v. Carhart*, 530 U.S. 914, 917 (2000) (considering the possibility of some prosecutors leveraging the full scope of

the criminal statute); *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 800 at n.10 (1987) (expressing concern for when "the parties potentially subject to [proposed prosecutorial] power would include the entire population"); *Bordenkircher v. Hayes*, 434 U.S. 357, 365 (1978) (Blackmun, J., dissenting) (imagining an "aggressive" prosecutor under the majority's standard). This is especially important with statutes that affect the foreign born where prosecutorial priorities can shift over time.[5] Should materiality be deemed irrelevant to the 18 U.S.C. § 1425(a) inquiry, new prosecutorial priorities, or the decisions of an aggressive individual prosecutor, will be free to target naturalized citizens whose only misstep was an immaterial false statement. The question in this case is whether section 1425(a) grants such immense power.

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[5] For example, prosecutions under criminal immigration laws for illegal entry have climbed 182% over the past ten years and 6407% over the past twenty years. *See* Transactional Records Access Clearinghouse, Criminal Prosecutions for Illegal Entry Up, Re-Entry Down (as of May 2016), http://trac.syr.edu/immigration/reports/430/ (last visited Feb. 28, 2017). Similarly, prior to this Court's ruling in *Flores-Figueroa v. United States*, 556 U.S. 646 (2009), some prosecutors adopted an aggressive posture on the elements of aggravated identity theft to prosecute noncitizen workers. *See* Peter Moyers, *Butchering Statutes: The Postville Raid and the Misinterpretation of Federal Law*, 32 Seattle U. L. Rev. 651 (2009).

B. The naturalization application seeks virtually limitless and deeply personal information that may lead to immaterial misstatements.

The naturalization application form, known as the N-400,[6] is so broad that it can easily lead to immaterial misstatements. The form demands a vast range of information including names and addresses of parents, spouses, and children, as well as the applicant's travel, civic activities, criminal history, residences, employment, education, political and organizational affiliations, taxes, and a range of behaviors.[7] Some questions are time-limited ("Where have you lived during the last five years?") while others seek cumulative information from the duration of an applicant's entire life ("Have you **EVER** been a member of, involved in, or in any way associated with, any organization, association, fund, foundation, party, club, society, or similar group in the United States or in any other location in the world?") (emphasis original). Many questions include expansive terms ("Have you **EVER** committed,

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[6] The current version of the naturalization form is available at https://www.uscis.gov/n-400 (last visited Feb. 28, 2017). Past versions of the form have also sought expansive information. *Amici* are not questioning here the authority of the agency to ask for such information, but note that the more expansive the form, the more likely it is to lead to immaterial misstatements.

[7] 8 C.F.R. § 1316.10(a)(1) requires that all applicants for naturalization bear the burden of demonstrating good moral character for the statutorily prescribed period. 8 C.F.R. § 1316.10(a)(2) provides authority for immigration authorities to consider conduct from beyond the statutorily prescribed period of five years when conducting the good moral character inquiry.

assisted in committing, or attempted to commit, a crime or offense for which you were **NOT** arrested?") (emphasis original). Many questions list terms that indicate less serious activity next to terms that are very serious (asking whether one was "**EVER**" involved with "trying to hurt, a person on purpose" in the same question that asks about involvement in genocide and torture) (emphasis original). The form requires that applicants submit additional information, such as information that does not fit within the space given on the form or an explanation for a question to which the applicant answered "yes," on additional sheet(s) of paper. Correctly filled out, the application is likely to be far longer than 21 pages.

Because of the N-400's length and complexity, many individuals seek assistance in completing the applications: people enlist spouses, partners and family members, employ translators, and attend citizenship drives[8] where volunteers help applicants fill out parts or all of the form. The fact that many applicants are not alone when they fill out the form, coupled with the fact that the form seeks both intimate details and information from the entirety or large portions of one's life, create an environment in which individuals may shape responses on the N-400 in ways that are not material to their eligibility for citizenship.

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[8] The New Americans Campaign, one of many campaigns to assist applicants in the naturalization process, has more than one citizenship drive per day. *See* http://newamericanscampaign.org/events (last visited Feb. 28, 2017).

Applicants may well omit details perceived as childish, irrelevant or embarrassing.[9] Applicants may answer "no" to questions for which answering "yes" might make them feel ashamed and embarrassed because of their relationship with or perception of the volunteer helping them with the form.[10] Applicants may leave out information about their participation or viewpoint on contentious political issues for fear of offending others.[11] Applicants may provide inaccurate information about their height, weight, hair color, or other personal physical truths over which vanity or embarrassment prevails. None of these omissions or misstatements are per se material to the procurement of immigration benefits, and yet all would become criminal acts warranting prison and denaturalization under the government's proposed standard.[12]

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[9] *See generally* Erving Goffman, The Presentation of Self in Everyday Life (Anchor/Doubleday 1959).

[10] *See generally* Mark R. Leary, Self-presentation: Impression Management and Inter-personal Behavior (Westview Press 1995).

[11] Social scientists have observed that survey participants may conceal their true preferences because of perceptions that their true opinions run counter to perceived societal norms. *See generally* Brian D. Silver, Barbara A. Anderson & Paul R. Abramson, *Who Overreports Voting?* 80 Am. Pol. Sci. Rev. 613-24 (1986); C. Kirk Hadaway, Penny Long Marler, and Mark Chaves, *What the Polls Don't Show: A Closer Look at US Church Attendance*, 58 Am. Soc. Rev. 741-52 (1993).

[12] In addition, many questions include terms that an applicant might not understand, such as what constitutes a crime for which you were not arrested. Under the government's standard, a defendant could be forced to take the stand simply to explain the misunderstandings underlying an immaterial inaccurate statement.

1. Two areas of the naturalization application – sections seeking information about organizational affiliations and criminal acts – illustrate how questions are framed so broadly that they are conducive to innocuous false statements.

Questions 9, 22 and 23 on the naturalization application illustrate how the form phrases questions in such a broad way that they are conducive to innocuous false statements. These questions ask for answers that span the applicant's lifetime and are worded to include almost an infinite array of associations and conduct.

- Part 12, Question 9A asks: "*Have you EVER been a member of, involved in, or in any way associated with, any organization, association, fund, foundation, party, club, society, or similar group in the United States or in any other location in the world?*" Part B then asks applicants who answered "yes" to Part A to "*provide the information*" in a chart seeking "*Name of the Group*", "*Purpose of the Group*" and "*Dates of Membership*." Part B also asks applicants to "*provide any evidence to support your answers.*"

The scope of the question is breathtaking; it contains three catchall clauses ("in any way associated with", "or similar group" and "in any other location in the world"), and asks for information spanning the applicant's entire life. No definitions of the means of participation (member, involvement, association) or the associations themselves (organization, association,

fund, foundation, party, club, society, or similar group) are included, making the potential list near infinite. It is not clear whether the question seeks information about charitable donations, grade school clubs, intramural sports teams, tenant associations, and other seemingly trivial involvement or groups.

If an applicant were to omit associations under the assumption that they were too trivial, irrelevant, fleeting, or minor to rise to the significance of the application, the applicant's liberty and citizenship would be threatened by the immense prosecutorial power the government seeks. Similarly, if an applicant were to leave out information about participation in a group committed to the peaceful advancement of certain populations or viewpoints considered deeply controversial (reproductive freedoms, LGBTQ rights, etc.), the omissions could be reached by the government's claimed prosecutorial power.

- Part 12, Question 22 asks: "*Have you **EVER** committed, assisted in committing, or attempted to commit, a crime or offense for which you were **NOT** arrested?*"

Again, the question seeks information from an applicant's entire life. Notably, this question is not limited to crimes, but reaches "offenses" which could include an array of quotidian behaviors that were not even marked by an arrest or a citation. Read literally, this question asks for every time the person drove over the speed limit, littered, rode a bicycle on a sidewalk,

engaged in underage drinking, failed to separate recyclables, or jaywalked. These petty offenses are sometimes the subject of citations or tickets that, like traffic citations, do not require arrests or court appearances.

- Part 12, Question 23 asks: "*Have you **EVER** been arrested, cited or detained by any law enforcement officer for any reason?*"

Applicants may well fail to list offenses they perceive as too petty to list or may fail to list times they were stopped by a law enforcement officer not understanding it constituted a formal citation or detention.

2. The naturalization application generally asks questions about a broad range of personal information that could also lead to innocuous false statements.

The naturalization application asks for extensive detailed information about the applicant, family members, prior marriages, travel, and employment. Applicants answering these questions are only human and their sense of self, as well as the context in which they are answering the questions, may lead to innocuous and immaterial misstatements.

- Part 2, Question 3 asks applicants to list "*other names you have used since birth, including nicknames, aliases, and maiden name, if applicable.*"

An applicant could fail to list a nickname, particularly if a nickname is embarrassing or from a remote

period of the person's life. Applicants could infer from the inclusion of "aliases" and "maiden name" in the list of information sought a certain level of required formal/legal significance to any names listed, and omit more informal nicknames. Although some nicknames might be material because they link an individual to problematic behavior, others would be immaterial.

- Part 5, Question 1 asks: "*Where have you lived during the last five years? Provide your most recent residence and then list every location where you have lived during the last five years. If you need extra space, use additional sheets of paper.*"

An applicant could list someone else's address in order to facilitate receipt of notices or due to shame if, for example, the applicant lives in a homeless shelter or with parents as an adult. An applicant could fail to list a past residence that was shared with a prior romantic partner – a detail upon which the applicant's current partner and application assistant may not look favorably. Omitting residences could lead participants to exaggerate the duration of their other residences.

- Part 7 asks applicants to check boxes to identify their "*Ethnicity,*" "*Race,*" "*Height (in inches),*" "*Weight (in pounds)*", "*Eye color,*" and "*Hair color.*"

Applicants could fail to disclose their true hair or eye color (if they color their hair and/or have colored contact lenses), and could embellish their height and

understate their weight. They could do so out of embarrassment or attraction with regard to their application assistant, vanity, or other self-image issues.

- Part 8 asks about employment and schools and instruct applicants: "*List where you have worked or attended school full time or part time during the last five years. Provide information for the complete time period. Include all military, police, and/or intelligence service. Begin by providing information about your most recent or current employment, studies, or unemployment (if applicable). Provide the locations and dates where you have worked, were self-employed, were unemployed, or have studied for the last five years. If you worked for yourself, type or print 'self-employed.' If you were unemployed, type or print 'unemployed.' If you need extra space, use additional sheets of paper.*"

An applicant could fail to disclose a period of unemployment, out of shame and embarrassment. An applicant could fail to disclose menial, piecemeal work (babysitting, dog-walking, etc.), believing those jobs to be too insignificant or irrelevant.

- Part 10 of the N-400 asks about marital history (current marital status, number of marriages, address of current spouse, information about previous spouses, etc.).

An applicant could list the same address for the spouse's home because they are physically separated but working on reconciling and believes that they will reconcile. Evidence of past marriages that have been

annulled or terminated could be difficult to gather, or the details difficult to recollect or shameful, and so an applicant may omit them.

- Part 12, Question 5 asks: "*Have you **EVER** been declared legally incompetent or been confined to a mental institution?*"

While being declared legally incompetent may be material to the naturalization process, confinement at some point in the past may be both a shame-inducing and immaterial phenomenon that applicants might hesitate before disclosing.

- Part 12, Question 14 asks: "*Were you **EVER** involved in badly hurting, or trying to hurt, a person on purpose?*"

An applicant may fail to disclose a schoolyard fight, believing it to be irrelevant or not surpassing a threshold of severity implied by the question (that also asks about involvement in genocide and torture).

- Part 12, Question 19 asks: "*Did you **EVER** receive any type of military, paramilitary (a group of people who act like a military group but are not a part of the official military), or weapons training?*"

An applicant may read the military/paramilitary clauses to limit the question to specific contexts, and omit being trained at a shooting range in a gun-friendly state.

A prosecutor scanning a past naturalization application therefore has ample opportunity to find innocuous false statements that in many cases would not have been in any way material to the granting of citizenship. The intimate and expansive nature of information sought by the application can provoke shame, embarrassment, or a sense that certain details are simply irrelevant. Although there may well be cases where one of these misstatements would be material, a rule that ignores materiality would allow an aggressive prosecutor to seize on any one of these misstatements to meet the government's burden of proof to obtain a verdict of guilty, and strip a person of citizenship.

II. The criminal denaturalization statute requires that a false statement be material as is the case with civil denaturalization.

A. The Sixth Circuit's application of a *lower* substantive standard for criminal denaturalization as compared to civil denaturalization is unprecedented.

All parties agree that if a court is to order denaturalization in a civil proceeding under 8 U.S.C. § 1451(a) on the ground that citizenship has been procured through concealment or misrepresentation of some fact, then the government must prove that such fact is material. This Court resolved that question unequivocally in *Kungys v. United States*, 485 U.S. 759, 767 (1988). In the proceedings below, the District Court delivered jury instructions which permitted the jury to

conclude that Petitioner could be denaturalized on the basis of false statements in her application for naturalization even if such statements were not material. Pet. App. 83a-89a. The Sixth Circuit has blessed these instructions on the ground that "Congress has created two alternative approaches to denaturalization, one civil and one criminal." *United States v. Maslenjak*, 821 F.3d 675, 691 (6th Cir. 2016).

The civil approach, under section 1451(a), to revoke citizenship for a misrepresentation would require the government to prove materiality. *Kungys*, 485 U.S. at 767. The government here, however, claims that it can circumvent any showing of materiality by pursuing the "other approach." That path, under 8 U.S.C. § 1451(e) is criminal in nature insofar as it applies only in the case of a criminal conviction under 18 U.S.C. § 1425(a) and does not, according to the Sixth Circuit, require the government to prove materiality. Thus, the Sixth Circuit has, in essence, read the Immigration and Nationality Act ("INA") to establish a *lower* substantive standard for criminal denaturalization than civil denaturalization.

In what might be thought of as a "seesaw" interpretation of the INA, the Sixth Circuit envisions Congress here to be trading procedural and substantive requirements off one another. The Sixth Circuit provides no authority for this highly novel interpretation of the relationship between substance and procedure in the INA.

Clearly, if a sanction were of the gravity to require criminal process, Congress would be constitutionally

prohibited from stripping that process and attempting to make up for the procedural deficiencies by heightening the substantive elements the government had to prove. Going in the other direction, nothing would constitutionally prohibit Congress from granting criminal process in the case of a sanction that did not require it.

We cannot, however, identify *any* instance in which Congress applies simultaneously a civil and criminal approach with respect to the very same sanction and weighs substantive and procedural components off one another, as the Sixth Circuit suggests is the case here. That Congress simply does not do this is consistent with the concurrence below, where Judge Gibbons noted "[n]or have I located any analogous context in which the elements of a crime are less onerous than the elements of the related civil penalty proceeding." 821 F.3d at 697. It is thus highly unlikely that Congress would have *lowered* the substantive standard for denaturalization under section 1425(a) without some explicit reference to the fact.

A far more plausible interpretation of the denaturalization statute is that Congress meant the standard for civil denaturalization, including the requirement that materiality be proven for misrepresentations, to function as a floor. Should denaturalization occur within the criminal path, the defendant would of course be afforded the heightened procedural protections that are due. But the government's substantive burden could be no lower than would be required in a civil case.

B. The structural connection between civil and criminal denaturalization is best understood as serving the goal of judicial parsimony.

As opposed to the Sixth Circuit's approach, a far more reasonable interpretation of the structural role of section 1451(e) within the broader set of laws dealing with immigration and nationalization is that Congress simply wished to serve the goal of judicial parsimony. Criminal convictions under section 1425(a) will frequently arise in circumstances where the underlying facts would support denaturalization through a civil proceeding under section 1451(a). Where that is the case, there would be little to gain in forcing the government to bring a separate civil case to prove the requisites for denaturalization. Conversely, however, if the underlying facts do not support denaturalization under section 1451(a), there would be no basis to order denaturalization under section 1451(e).

The present case centers on misrepresentations in a denaturalization application. When one considers the fact that eligibility for naturalization, and retention of citizenship thereafter, is wholly determined by facts up to the time of the naturalization grant, one can immediately see that the Sixth Circuit's approach produces truly anomalous results.

As discussed in Part I of our brief, there are many ways in which an applicant for naturalization might state immaterial untrue information on his or her application. For example, the petitioner in *Kungys* had

lied about the dates and place of his birth. There was evidence that he had created these fabrications in earlier interactions with the Nazis in order to cover his participation in the Lithuanian resistance movement. *Kungys*, 485 U.S. at 767 n.5. The petitioner claimed to have simply repeated the misrepresentations in his U.S. immigration documents, though with no particular thought that the misrepresented facts would in any way be relevant to his U.S. immigration status. *Id.* Although members of this Court disagreed on the proper meaning of "materiality," no member of the Court found these facts to be material. Justice Scalia, for the Court, wrote that there had been no suggestion that these facts were relevant to the qualifications for citizenship. *Id.* at 774.

Similarly, consider an applicant who lies about his age purely out of vanity. Or an applicant who lies about the fact that she has been married and divorced because she is embarrassed by the prospect that this might lead to revelation of and questioning about sexual abuse that she had suffered during marriage. In neither case would the underlying misrepresentation (say, the fact that somebody is 41 instead of 39 or the fact that somebody has been married and then sought divorce because of sexual abuse) constitute per se grounds for denying citizenship. If such falsehoods were sworn to in a naturalization application but then revealed in the course of the applicant's naturalization interview, the decisionmaker would have to consider whether the erroneous statements constituted grounds for denying citizenship. But the question would not be

whether there was some misstatement, but how that misstatement bore on the individual's good moral character and other qualifications for citizenship. Assuming all qualifications of citizenship have been met, the applicant should be naturalized.

Under the Sixth Circuit's approach, however, the government could come back at some later point in time and seek to denaturalize such a citizen by bringing a criminal charge under section 1425(a) on the theory that the defendant had told an immaterial falsehood during the naturalization process. This would be a truly bizarre outcome especially when the government had full knowledge of the falsehood at the time of the grant of citizenship. Such an unjustified result can be easily avoided under the approach we advance here, whereby the civil standard sets a substantive floor and the criminal denaturalization path under section 1451(e) is understood simply to serve a goal of judicial parsimony in cases where the civil standard has been effectively proven in a criminal proceeding.

In the hypothetical described above, there would be no basis for denaturalization in a civil proceeding set out in section 1451(a) based on a misrepresentation, given the requirement of materiality under *Kungys*. Parsimony is a virtue only where it leads to correct outcomes. Ordering denaturalization in a criminal proceeding under section 1451(e) on these facts would thus be precluded under our proposed reading of the structural connection between civil and criminal denaturalization.

C. Implying a materiality standard for false statements under section 1425(a) does not lead to incongruous legal outcomes.

One of the Sixth Circuit's reasons for rejecting its sister circuits' interpretation of section 1425(a) as implying materiality is that this cannot be squared with the broader framework of laws governing the immigration process and would thus produce incongruous results. The Sixth Circuit raised three sorts of concerns about potential incongruity that would follow from implying a materiality requirement into section 1425(a). The purported incongruities drop away in each case once one takes account of the failings of the court's "seesaw" interpretation of the INA.

First, the Sixth Circuit focused on the relationship between the elements of the crime specified in section 1425(a) itself and the elements of certain of the predicate offenses that the Sixth Circuit took to be included within section 1425(a)'s ambit. Specifically, § 1425(a), in relevant part, makes it a crime to "knowingly procure . . . contrary to law, the naturalization of any person." The Sixth Circuit reads "contrary to law" here to cover "all laws applicable to naturalization." 821 F.3d at 686. This would mean the phrase includes not just the INA but also criminal offenses related to immigration covered in Title 18. This is to be contrasted with the Ninth Circuit's approach in *United States v. Puerta*, 982 F.2d 1297 (9th Cir. 1992), which the Sixth Circuit suggested interpreted the phrase "contrary to

law" in section 1425 to mean "contrary to the INA" only. 821 F.3d at 687.

Notably, under the Sixth Circuit's reading of the scope of section 1425(a) it would include as a predicate crime 18 U.S.C. § 1015(a), which criminalizes, *inter alia*, false statements in naturalization proceedings. Further, the Sixth Circuit concluded that section 1015(a) does not have a materiality requirement. 821 F.3d at 687. The Sixth Circuit found it incongruous that a predicate crime under section 1425(a) would not require materiality, while section 1425(a) itself would. *Id.* at 688.

We agree with Petitioner's counsel that section 1015(a) actually does require proof of materiality for false statements. *See* Pet. Brief at 30-37. In that case the seeming incongruity identified by the Sixth Circuit drops away. But even if the Sixth Circuit is correct in its reading of section 1015(a), there is no incongruity so long as one rejects the Sixth Circuit's unjustified interpretation of the INA as involving a lower substantive standard for criminal as compared to civil denaturalization.

It is a false dichotomy to suggest that "contrary to law" in section 1425(a) must mean either "contrary to the INA" (i.e., the Ninth Circuit approach) or "contrary to the INA or other criminal offenses related to immigration" (i.e., the Sixth Circuit approach). A far more plausible interpretation of "contrary to law" under section 1425 is that naturalization has been procured in contravention of the underlying substantive floor set

by the civil standard. At the very least, this will include naturalization that is "contrary to the INA." It could also include cases in which there is a violation of a statute under Title 18 related to immigration. The talisman here, though, should simply be whether the factual record that would support the "contrary to law" element for a conviction under Title 18 would have supported denaturalization in a civil case under section 1451(a).

The Sixth Circuit reads "contrary to law" in section 1425(a) as if it were shorthand for a laundry list of particular statutory provisions which Congress did not expressly fill in but which courts must infer. Thus, a provision like section 1015(a) is either in or out. That rigid interpretation of the provision, however, is simply an offshoot of the Sixth Circuit's mistaken view on applying a lower substantive standard for criminal denaturalization. Once one acknowledges that the civil standard sets a substantive floor, it becomes readily apparent that "contrary to law" cannot be interpreted in such a rigid manner. The substantive floor established by the civil standard might be met in the proof of certain criminal offenses in Title 18, but one cannot conclude the matter categorically on a section-by-section basis. It depends, rather, on the factual record that the government is able to muster in any particular criminal case.

Second, the Sixth Circuit highlighted the fact that materiality is not required across the board in the civil standard for denaturalization. The Sixth Circuit thus concluded that "[r]equiring proof of materiality under

18 U.S.C. § 1425(a) is incompatible" with these other federal provisions which provide a civil path to denaturalization absent a showing of materiality under section 1451(a).

Again, the proper reading of section 1425(a) is that, at a minimum, it incorporates the substantive civil denaturalization standard as a floor. The question presented to this Court relates to application of section 1425(a) based on misrepresentations in the naturalization application. This clearly tracks the portion of section 1451(a) where this Court required a showing of materiality in *Kungys*.

Third, the Sixth Circuit concluded that if materiality were required under section 1425(a), then "the government would have little incentive to ever pursue the denaturalization of a naturalized citizen for making false statements through a criminal indictment under 18 U.S.C. § 1425." 821 F.3d at 692. The idea here is that the government would face the same substantive proof hurdles, but with the heightened procedural protections afforded a criminal defendant. The Sixth Circuit seemed to suggest in this regard that section 1425 would have no point if it implies materiality because the government would not proceed under the section.

This again is to misconstrue the relationship between civil and criminal denaturalization. The point of section 1425 is not simply to provide an alternate path to denaturalization. The point is to set out criminal sanctions in the form of imprisonment and fines, quite aside from denaturalization. It is the government's

judgment that those additional sanctions are appropriate, as opposed to the collateral consequence of denaturalization under section 1451(e), that would explain the government's incentive to choose a suit that requires additional process.

CONCLUSION

For the foregoing reasons, *amici* urge this Court to reverse the decision of the Court of Appeals for the Sixth Circuit.

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Respectfully submitted,

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